TITLE 7—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

PART 1—WILLS

CHAPTER 1—GENERAL PROVISIONS REGARDING WILLS

§ 1. Definition of will

As used in this Code, unless it is otherwise provided or the context requires a different construction, application or meaning, "will" means "last will and testament" and includes "codicil".

§ 2. Persons who may make a will; property subject to disposal

Every person of sound mind, over 18 years of age, may dispose by will, of:

(1) his separate property;

(2) the whole or any part of his body to a teaching institution, university, college, the health director of the Canal Zone Government, or a legally licensed hospital, or to or for the use of a nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by an agency approved under regulations established pursuant to section 911 of Title 2, either for use as the institution, university, college, the health director, hospital or agency may see fit, or for use as expressly designated in the will; and

(3) community property to the extent provided by sections 521 and 522 of this title.

The estate not disposed of by will is succeeded to as provided by chapters 31 and 33 of this title.

§ 3. Effect of duress, menace, fraud or undue influence

A will, or part of a will, procured by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

§ 4. Conjoint or mutual will

A conjoint or mutual will is valid, but may be revoked by any of the testators in like manner as any other will.

§ 5. Republication by codicil

The execution of a codicil referring to a previous will republishes the will as modified by the codicil.

§ 6. Bequest for charitable uses

(a) A bequest or legacy to a charitable or benevolent society or corporation, or to a person, in trust for charitable uses, is not valid unless the will is duly executed at least 30 days before the death of the testator.

If the testator has legal heirs, the charitable bequests may not exceed one third of his estate; if their aggregate amount is more, they shall be reduced pro rata to one third of the estate.

Testamentary dispositions contrary to this section are void and the property shall go to the residuary legatee, next of kin, or heirs, according to law.

(b) This section does not apply to bequests or devises made by will executed at least six months prior to the death of a testator, if:

(1) he leaves no parent, spouse, child, or grandchild; or

(2) his parents, spouse, children, and grandchildren waived the restriction in this section by a writing executed at least six months before his death.

CHAPTER 3—EXECUTION OF WILLS

Sec.

§ 41. Execution of written will; attestation

A will, other than a nuncupative will, shall be in writing, and a will other than a holographic will, and a nuncupative will, shall be executed and attested as follows:

(1) it shall be subscribed at the end thereof to the testator himself, or by another person in his presence and by his direction; and a person who subscribes the testator's name, by his direction, shall write his own name as a witness to the will, but a failure to do so does not affect the validity of the will;

(2) the subscription shall be made, or the testator shall acknowledge it to have been made by him or by his authority, in the presence of both of the attesting witnesses, present at the same time;

(3) at the time of subscribing or acknowledging the instrument, the testator shall declare to the attesting witnesses that it is his will;

(4) there shall be at least two attesting witnesses, each of whom shall sign the instrument as a witness, at the end of the will, at the testator's request and in his presence; and the witnesses shall give their places of residence, but a failure to do so will not affect the validity of the will.

§ 42. Devises and bequests to subscribing witnesses

Beneficial devises, bequests and legacies to a subscribing witness are void, unless there are two other competent and disinterested subscribing witnesses to the will, except that if the interested witness would be entitled to a share of the estate of the testator in case the will were not established, he shall take such proportion of the devise or bequest made to him in the will as does not exceed the share of the estate which would be distributed to him if the will were not established.

§ 43. Creditors as competent witnesses

A mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

§ 44. Holographic will

A holographic will is one that is entirely written, dated, and signed by the testator himself. It is subject to no other form, and may be made in or out of the Canal Zone, and need not be witnessed. An address, date or other matter written, printed or stamped upon the document, which is not incorporated in the provisions that are in the handwriting of the decedent, may not be considered as a part of the will.

§ 45. Nuncupative will; persons who may make; witnesses; property disposable

(a) A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. It may be made orally by a person who, at the time of making, is in:

(1) actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or

(2) expectation of immediate death from an injury received the same day.

(b) A nuncupative will shall be proved by two witnesses who were present at the making thereof, at least one of whom was asked by the testator, at the time, to bear witness that it was his will, or to that effect.

(c) A nuncupative will may dispose of personal property only, and the estate bequeathed may not exceed $1,000 in value.

§ 46. Will made outside the Canal Zone

A will made outside the Canal Zone which might be proved and allowed by the laws of the State or country in which it was made, may be proved, allowed, and recorded in the Canal Zone, and has the same effect as if executed according to the laws of the Canal Zone.

§ 47. Will made in Canal Zone by citizen of another State or country

A will made within the Canal Zone by a citizen or subject of another State or country, which:

(1) is executed in accordance with the law of the State or country of which he is a citizen or subject; and

(2) might be proved and allowed by the law of that State or country—

may be proved, allowed, and recorded in the Canal Zone, and has the same effect as if executed according to the laws of the Canal Zone.

§ 48. Construction of chapter

This chapter does not impair the validity of the execution of a will made before January 2, 1963.

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CHAPTER 5—REVOCATION OF WILLS

Sec.
81. Revocation of written will; duplicate will.
82. Revocation by subsequent will.
83. Effect on prior will of revocation of subsequent will.
84. Revocation by marriage.
85. Revocation by marriage and birth of issue or adoption of children.
86. Instrument altering interest in property previously disposed of by will.
87. Contract for sale or transfer of property previously disposed of by will.
88. Mortgage or transfer of property previously disposed of by will.
89. Revocation of codicils.
90. Construction of chapter.

§ 81. Revocation of written will; duplicate will

(a) Except as provided in this chapter, a written will, or any part thereof, may be revoked or altered only by:

(1) a written will, or other writing of the testator, declaring the revocation or alteration, and executed with the same formalities required for the execution of a will; or

(2) being burned, torn, cancelled, defaced, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself, or by another person in his presence and by his direction; and if the act is done by a person other than the testator, the direction of the testator, and the fact of the injury or destruction, shall be proved by two witnesses.

(b) A will executed in duplicate is revoked if one of the duplicates is burned, torn, cancelled, defaced, obliterated, or destroyed under the circumstances specified by subsection (a)(2) of this section.

§ 82. Revocation by subsequent will

A will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the prior will. In other cases the prior will remains effectual as far as consistent with the provisions of the subsequent will; but the mere naming of an executor in the prior will need not be given effect by the court when the subsequent will is otherwise wholly inconsistent with the terms of the prior will, the intention of the testator in this respect being left to the determination of the court.

§ 83. Effect on prior will of revocation of subsequent will

If, after making a will, the testator makes a second will, the destruction or other revocation of the second will does not revive the first will, unless:

(1) it appears by the terms of the revocation that it was the intention to revive and give effect to the first will; or

(2) after the destruction or other revocation, the first will is duly republished.

§ 84. Revocation by marriage

If a person marries after making a will, and the spouse survives the maker, the will is revoked as to the spouse, unless:

(1) provision has been made for the spouse by marriage contract; or

(2) the spouse is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision.

Other evidence to rebut the presumption of revocation may not be received.

§ 85. Revocation by marriage and birth of issue or adoption of children

If a person marries after making a will and has issue of the marriage, or marries after making a will and, with his or her spouse, legally adopts a child or children, and any of the issue of the marriage,

or of the children so adopted, survive the maker, or any of the issue of the marriage is born after the maker's death, the will is revoked as to the issue or adopted children so surviving, or as to the issue so born, unless:

(1) provision has been made for the issue or adopted child or children by some settlement; or

(2) the issue or adopted child or children are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision.

Other evidence to rebut the presumption of revocation may not be received.

§ 86. Instrument altering interest in property previously disposed of by will

If the instrument by which an alteration is made in the testator's interest in any property previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless the inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

§ 87. Contract for sale or transfer of property previously disposed of by will

An agreement made by a testator for the sale or transfer of property disposed of by a will previously made does not revoke the disposal. The property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the legatees, as might be had against the testator's successors, if the property had passed by succession.

§ 88. Mortgage or transfer of property previously disposed of by will

A testamentary disposal of property is not revoked by a subsequent:

(1) charge or encumbrance placed by the testator upon the property to secure the payment of money or the performance of a covenant or agreement; or

(2) transfer, settlement, or other act of the testator by which his interest in the property is altered but not wholly divested.

Subject to the charge or encumbrance, the property, or the remaining interest therein, passes by the will.

§ 89. Revocation of codicils

The revocation of a will revokes all its codicils.

§ 90. Construction of chapter

This chapter applies to wills made by a testator living at the expiration of one year after January 2, 1963.

CHAPTER 7—KINDRED NOT MENTIONED IN WILL; DEATH OF LEGATEES

Sec.

§ 121. Children and grandchildren omitted in will

When a testator omits to provide in his will for any of his children, or for the issue of a deceased child, whether born before or after the making of the will or before or after the testator's death, and the child or issue are unprovided for by a settlement, and have not had an equal proportion of the testator's property bestowed on them by way of

advancement, unless it appears from the will that the omission was intentional, the omitted child or issue succeed to the same share in the estate of the testator as if he had died intestate.

§ 122. Same; sources of share; apportionment

The share of the estate which is assigned to a child or issue omitted in the will, as provided by section 121 of this title, shall first be taken from the estate not disposed of by will, if any. If that is not sufficient, as much as may be necessary shall be taken from all the legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to a specific bequest, or other provision in the will, would thereby be defeated. In such a case, the specific legacy or provision may be exempted from the apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

§ 123. Distribution in case of prior death of legatee

If a legatee dies before the testator, the testamentary disposition to him fails, unless:

(1) an intention appears to substitute another person in his place; or

(2) the bequest is to any kindred of the testator, and the legatee leaves lineal descendants, or is dead at the time the will is executed, but leaves lineal descendants surviving the testator.

The descendants referred to in paragraph (2) of this section take the estate so given by the will in the same manner as the legatee would have done had he survived the testator.

CHAPTER 9—INTERPRETATION OF WILLS

Sec.

§ 151. Rules of interpretation

(a) Except as provided by subsection (b) of this section, in interpreting a will subject to the law of the Canal Zone, the rules prescribed by this chapter and chapters 11 and 13 and section 1981 of this title shall be observed, unless an intention to the contrary clearly appears.

(b) With respect to the interpretation of wills executed before January 2, 1963, the rules prescribed by the laws in force when the wills were executed govern.

§ 152. Several testamentary instruments; intent

Several testamentary instruments, executed by the same testator, shall be taken and construed together as one instrument. A will shall be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it shall have effect as far as possible.

§ 153. Every expression to be given some effect; avoidance of intestacy

The words of a will shall receive an interpretation which will give to every expression an effect, rather than one which will render any of the expressions inoperative. Of two modes of interpreting a will, that shall be preferred which will prevent a total intestacy.

§ 154. Ambiguity and doubts; construction as a whole; irreconcilable parts

Where the meaning of a part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or a recital thereof, in another part of the will. All the parts of a will shall be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable the latter prevails.

§ 155. Clear bequest; effect of reasons or other parts of will

A clear and distinct bequest is not affected by:

(1) reasons assigned therefor;

(2) other words not equally clear and distinct;

(3) inference or argument from other parts of the will; or

(4) an inaccurate recital of or reference to its contents in another part of the will.

§ 156. Ascertainment of intention

In case of uncertainty arising from the face of the will, as to the application of any of its provisions, the testator's intention shall be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

§ 157. Ordinary sense of words; technical words

(a) The words of a will shall be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

(b) Technical words are not necessary to give effect to any species of disposition by a will; but technical words in a will shall be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with their technical sense.

§ 158. Words of donation or of limitation; disposition to heirs, etc.

(a) A testamentary disposition to "heirs", "relations", "nearest relations", "representatives", "legal representatives", "personal representatives", "family", "issue", "descendants", "nearest" or "next of kin" of a person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of that person, according to the provisions of chapter 31 of this title on succession.

(b) The terms defined by subsection (a) of this section are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to his ancestor.

CHAPTER 11—EFFECT OF CERTAIN PROVISIONS

Sec.

§ 191. Words referring to death or survivorship

Words in a will referring to death or survivorship simply, relate to the time of the testator's death, unless possession is actually postponed, when they shall be referred to the time of possession.

§ 192. Bequest to a class; after-born children

A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

A child conceived before, but not born until after, a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

§ 193. Bequest of all property; power to devise

A bequest of all the testator's property, in express terms, or in any other terms denoting such an intent, passes all the property which he was entitled to dispose of by will at the time of his death, including property embraced in a power to devise.

§ 194. Residuary disposition

A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

§ 195. Mistakes and omissions; extrinsic evidence; oral declarations

When there is an imperfect description in a will, or no person or property exactly answers the description, mistakes and omissions shall be corrected, if the error appears from the context of the will or from extrinsic evidence, excluding the oral declarations of the testator as to his intentions.

§ 196. Vesting of bequests

Testamentary dispositions, including bequests to a person on attaining majority, are presumed to vest at the testator's death.

§ 197. Plural legatees

A legacy given to more than one person vests in them as owners in common, unless the will otherwise provides.

CHAPTER 13—CONDITIONS AND REMAINDERS

Sec.

§ 231. Death of legatee of limited interest

The death of a legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

§ 232. Conditional disposition defined

A conditional disposition is one that depends upon the occurrence of an uncertain event, by which it is either to take effect or be defeated.

§ 233. Condition precedent; construction; operation

A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect. It is to be deemed performed when the testator's intention has been substantially, though not literally, complied with. Nothing vests until the condition is fulfilled, except where the fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

§ 234. Condition subsequent; operation

A condition subsequent is one under which an estate or interest is so given as to vest immediately, subject only to be divested by a subsequent act or event.

A testamentary disposition, when vested, may not be divested except upon the occurrence of the precise contingency prescribed by the testator for that purpose.

CHAPTER 15—LEGACIES AND INTEREST

Sec.

§ 261. Nature and designations of legacies

Legacies are distinguished and designated, according to their nature, as follows:

(1) A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if the legacy fails, resort may not be had to the other property of the testator.

(2) A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if the fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

(3) An annuity is a bequest of certain specified sums periodically. If the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

(4) A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

(5) All other legacies are general legacies.

§ 262. Bequest of interest or income; time of accrual

In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

§ 263. Time legacies due; interest; commencement of annuities

Legacies are due and deliverable one year after the testator's death, and bear interest from that time, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's death. Annuities commence at the testator's death.

§ 264. Construction of chapter

In all cases the provisions of this chapter are to be controlled by a testator's express intention.

PART 2—SUCCESSION; ESCHEAT; SIMULTANEOUS DEATHS

CHAPTER 31—SUCCESSION GENERALLY

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—COMMUNITY PROPERTY

SUBCHAPTER III—SEPARATE PROPERTY

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Subchapter I—General Provisions

§ 501. Succession defined

Succession is the acquisition of title to the property of one who dies without disposing of it by will.

Subchapter II—Community Property

§ 521. Title of surviving spouse; portion subject to testamentary disposition or succession

Upon the death of either husband or wife, one-half of the community property belongs to the surviving spouse. The other half is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse, subject to section 522 of this title.

§ 522. Community property subject to administration; exception; husband's control after death of wife

(a) Community property passing from the control of the husband by reason of his death is subject to administration, his debts, family allowance, and the charges and expenses of administration.

(b) Upon the death of the husband, his clothing and the household effects not exceeding $2,500 in value go to the surviving wife without administration, and are not subject to the debts and allowance referred to in subsection (a) of this section.

(c) Community property passing from the control of the husband by virtue of testamentary disposition by the wife is subject to administration, his debts, and the charges and expenses of administration, but the husband, pending administration, shall retain the same power to sell, manage and deal with the community personal property as he had in her lifetime; and his possession and control of the community property may not be transferred to the personal representative of the wife, except to the extent necessary to carry her will into effect.

Subchapter III—Separate Property

§ 541. Succession controlled by contract and Code

The separate property of a person who dies without disposing of it by will is succeeded to and shall be distributed as provided by this Part and Part 3 of this title, subject to the limitation of a marriage or other contract, and to this title.

§ 542. Distribution to surviving spouse and issue

(a) If the decedent leaves a surviving spouse and only one child or the lawful issue of a deceased child, the estate goes one-half to the surviving spouse and one-half to the child or issue.

(b) If the decedent leaves a surviving spouse, and:

(1) more than one child living; or

(2) one child living and the lawful issue of one or more deceased children; or

(3) the lawful issue of two or more deceased children—

the estate goes one-third to the surviving spouse and the remainder in equal shares to the children, if living, and to the lawful issue of any deceased child, by right of representation.

(c) If the decedent does not leave a child living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise, they take by right of representation.

§ 543. Distribution to issue where no surviving spouse

If the decedent does not leave a surviving spouse, but leaves issue, the whole estate goes to the issue. If all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise, they take by right of representation.

§ 544. Distribution where no issue

If the decedent does not leave issue, the estate goes one-half to the surviving spouse, and the other half to the decedent's parents in equal shares, and if either is dead the whole of half goes to the other. If there are no parents, one-half goes in equal shares to the brothers and sisters of the decedent and to the children or grandchildren of deceased brothers or sisters by right of representation.

§ 545. Distribution to surviving spouse where no issue or immediate relatives

If the decedent leaves a surviving spouse and neither issue, parent, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving spouse.

§ 546. Distribution to immediate family where neither issue nor spouse

If the decedent does not leave issue or a surviving spouse, the estate goes to his parents in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of the decedent and to children or grandchildren of deceased brothers or sisters, by right of representation.

§ 547. Distribution to next of kin where no spouse, issue or immediate family

If the decedent does not leave either issue, spouse, father, mother, brother, or sister, the estate goes to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor are preferred to those claiming through an ancestor more remote.

§ 548. Unmarried minor decedent

If a decedent dies under age without having been married, all the estate that came to him by succession from a parent goes in equal shares to the other children of the same parent, and by right of representation to the issue of any of the children who are dead; or if all the children of the parent are dead and any of them has left issue, to the issue. If all the issue are in the same degree of kindred to the decedent, they share equally; otherwise, they take by right of representation.

§ 549. Distribution of common property acquired from predeceased spouse where no surviving spouse or issue

If the decedent does not leave spouse or issue and the estate or any portion thereof was common property of the decedent and a previously deceased spouse while the spouse was living, the property goes in equal shares to the children of the deceased spouse and their descendants by right of representation.

If there are no children of the deceased spouse, one-half of the common property goes to the parents of the decedent in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of the decedent and their descendants by right of representation; and the other half goes to the parents of the deceased spouse, in equal shares, or if either is dead to the survivor, or if both are dead, then in equal shares to the brothers and sisters of the deceased spouse and their descendants by right of representation.

§ 550. Distribution of former separate property of predeceased spouse where no surviving spouse or issue

If the estate of a decedent, or any portion thereof, was separate property of a deceased spouse while living, and came to the decedent from the spouse by descent or bequest, the property goes in equal shares to the children of the spouse and their descendants by right of representation; and if none, then to the parents of the spouse, in equal shares, or if either is dead to the survivor, or if both are dead, then in equal shares to the brothers and sisters of the spouse and their descendants by right of representation.

§ 551. Distribution to next of kin of property acquired from predeceased spouse

If there is no one to succeed to a portion of the property in any of the contingencies provided for by sections 549 and 550 of this title, according to the provisions of those sections, that portion goes to the next of kin of the decedent in the manner provided for by section 547 of this title.

Subchapter IV—Miscellaneous Provisions

§ 571. Succession by right of representation; posthumous child

Inheritance or succession "by right of representation" takes place when the descendants of a deceased person take the same share or right in the estate of another person that the deceased person would have taken as an heir if living. A posthumous child is considered as living at the death of the parent.

§ 572. Determination of degree of kindred

The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 573. Lineal consanguinity; division

Lineal consanguinity, or the direct line of consanguinity, is the relationship between persons one of whom is a descendant of the other. The direct line is divided into a direct line descending, which connects a person with those who descend from him, and a direct line ascending, which connects a person with those from whom he descends. In the direct line there are as many degrees as there are generations. Thus, the child is, with regard to the parent, in the first degree; the grandchild, with regard to the grandparent, in the second; and vice versa as to the parents and grandparents with regard to their respective children and grandchildren.

§ 574. Collateral consanguinity

Collateral consanguinity is the relationship between persons who spring from a common ancestor, but are not in direct line. The degree is established by counting the generations, from one relative up to the common ancestor, and from the common ancestor to the other relative. In the computation the first relative is excluded, the other included, and the ancestor counted but once. Thus, brothers are related in the second degree, uncle and nephew in the third degree, cousins-german in the fourth, and so on.

§ 575. Inheritance rights of kindred of the half blood

Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance came to the intestate by descent or gift of one of his ancestors, in which case all those who are not of the blood of the ancestor are excluded from the inheritance in favor of those who are.

§ 576. Inheritance rights of illegitimate children; limitations

An illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of the child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents have intermarried, and his father, after the marriage, acknowledges him as his child, or adopts him into his family; in which case the child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

§ 577. Succession to estate of illegitimate child

The estate of an illegitimate child, who, having title to an estate not otherwise limited by marriage contract, dies without disposing thereof by will, is succeeded to as if he had been born in lawful wedlock if he has been legitimated by a subsequent marriage of his parents, or adopted by his father as provided by section 387 of Title 8; otherwise, the estate is succeeded to as if the child had been born in lawful wedlock and had survived his father and all persons related to him only through his father.

§ 578. Inheritance rights of adopted children; restriction

An adopted child is a descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from or through the adopting parent, the same as a natural parent. An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by adoption, nor does the natural parent succeed to the estate of the adopted child, nor does the adopted child succeed to the estate of a relative of the natural parent, nor does any relative of the natural parent succeed to the estate of an adopted child.

§ 579. Person convicted of murder or voluntary manslaughter of decedent

A person who has been convicted of the murder or voluntary manslaughter of the decedent is not entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under this chapter.

CHAPTER 33—ESCHEAT

Sec.

§ 611. When property escheats

If an intestate decedent does not leave a spouse or kindred, and there are no heirs to take his estate or any portion thereof, under section 549, 550 or 551 of this title, or if a person dies leaving any property in his estate not disposed of by will, and there are no persons entitled to succeed thereto under the laws of the Canal Zone, the property escheats to the United States.

§ 612. Action to determine right of United States to escheated property

When the United States attorney is informed that an estate has escheated or is about to escheat to the United States or that the property involved in an action or special proceeding has escheated or is about to escheat to the United States, he may commence an action on behalf of the United States to determine its rights to the property or may intervene on its behalf in an action or special proceeding affecting any such estate and contest the rights of claimants thereto. The action shall be commenced by filing a petition in the district court.

§ 613. Description of property

The petition referred to in section 612 of this title shall set forth:

(1) a description of the property;

(2) the name of the person last possessed of the property;

(3) the name of the person, if any, claiming the property, or any portion thereof; and

(4) the facts and circumstances by virtue of which it is claimed that the property has escheated.

§ 614. Order requiring interested parties to appear

Upon the filing of the petition specified by section 612 of this title, the court shall order all persons interested in the estate to appear and show cause, if any there be, within 60 days from the date of the order, why the estate should not vest in the United States. The clerk of the court shall cause notice of the order to be posted in three public places in the Canal Zone for four successive weeks prior to the date set for the hearing. Upon the giving of the notice the court shall have complete jurisdiction over the estate, the property, and the person of everyone having or claiming an interest in the property, and shall have complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon.

§ 615. Custody of property

The property in estates specified by sections 612–614 of this title shall, in the discretion of the court, be sold in the manner provided by Part 3 of this title for the sale of property of a decedent's estate, and the proceeds deposited with the Canal Zone Government, to be held for a period of five years from the date of the judgment pursuant to section 617 of this title.

§ 616. Joinder of parties and actions

In a proceeding brought by the United States attorney pursuant to this chapter any two or more causes of action may be joined in the same proceeding and in the same petition without being separately stated. It is sufficient to allege in the petition that the decedent left no heirs to take the estate; and the failure of the heirs to appear and set up their claims in the proceeding, or in any proceeding for the administration of the estate, is sufficient proof upon which to base the judgment in the proceeding or the decree of distribution.

§ 617. Appearance, pleadings, and judgment

Persons named in the petition specified by section 612 of this title may appear and answer, and traverse or deny the facts stated therein at any time before the time for answering expires. Any other person claiming an interest in the estate may appear and be made a defendant, by motion for that purpose in open court within the time allowed for answering. If no person appears and answers within the time, judgment shall be rendered that the United States is the owner of the property claimed in the petition.

If a person appears and denies the title set up by the United States, or traverses a material fact set forth in the petition, the issue of fact shall be tried as issues of fact are tried in civil actions.

If, after the issues are tried, it appears from the facts found or admitted that the United States has good title to the property in the petition mentioned, or any part thereof, judgment shall be rendered that the United States is the owner and entitled to the possession thereof.

§ 618. Claim to escheated property; procedure, hearing and determination; limitation

(a) Within five years after judgment in a proceeding had under this chapter, a person not a party or privy to the proceeding may file a verified petition in the district court, showing his claim or right to the property, or the proceeds thereof.

(b) The petition specified by subsection (a) of this section, among other things, shall state:

(1) the full name and the place and date of birth of the decedent;

(2) whether or not the decedent was ever married, and, if so, where, when, and to whom;

(3) how, when, and where the marriage, if any, of the decedent was dissolved;

(4) whether or not the decedent was ever remarried, and, if so, where, when, and to whom;

(5) the full names and the dates of birth of lineal descendants and ascendants and of all other known heirs, and the names and places of residence of all who are then surviving; and

(6) such other information as may be required by the court.

If for any reason the petitioner is unable to set forth any of the matters or things required by this subsection, he shall clearly state the reason in his petition.

(c) At least 20 days before the hearing of the petition specified by this section, a copy of the petition shall be served on the United States attorney, who shall answer it. The court shall thereupon try the issue as issues are tried in civil actions, and if it is determined that the petitioner is entitled to the property, or the proceeds thereof, the court shall order the property, if it has not been sold, to be delivered to him; or, if the property has been sold and the proceeds paid to the Canal Zone Government, the court shall order the Government to pay the proceeds to the petitioner.

(d) All persons who fail to appear and file their petitions within the time limited by this chapter are forever barred.

§ 619. Disposition of proceeds

If a claim to escheated property or the proceeds thereof is not filed within the time specified in section 618 of this title, the proceeds shall be covered into the Treasury of the United States as miscellaneous receipts.

CHAPTER 35—SIMULTANEOUS DEATHS

Sec.

§ 651. Insufficient evidence of survivorship

Where the title to property or the devolution thereof depends upon priority of death and there is not sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

§ 652. Beneficiaries of another person's disposition of property

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is not sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

§ 653. Joint tenants

Where there is not sufficient evidence that two joint tenants have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

§ 654. Insurance policies

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is not sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

§ 655. Husband and wife

Where a husband and wife have died, leaving community property, and there is not sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if such one-half were his separate property and the other one-half thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if such other one-half were her separate property, except as provided in section 654 of this title.

§ 656. Chapter not retroactive

This chapter does not apply to the distribution of the property of a person who has died before the effective date of this Code.

§ 657. Inapplicability of chapter if decedent provides different distribution

This chapter does not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

§ 658. Uniformity of interpretation

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

§ 659. Short title

This chapter may be cited as the Uniform Simultaneous Death Act.

PART 3—ADMINISTRATION OF DECEDENTS' ESTATES

CHAPTER 51—GENERAL PROVISIONS

§ 901. Passage of title to decedent's property; possession; charges

When a person dies, the title to his property passes to the person to whom it is devised or bequeathed by his last will, or, in the absence of disposition by will, to the persons who succeed to his estate as provided by Part 2 of this title; but all his property is subject to the possession of the executor or administrator and to the control of the district court for the purposes of administration, sale or other disposition under the provisions of this Part, and, except as otherwise provided by this title, is chargeable with the expenses of administering his estate, the payment of his debts, and the allowance to the family.

§ 902. Jurisdiction and venue

(a) Except as otherwise provided by this section, wills shall be proved and letters testamentary or of administration granted and administration of decedents' estates had, in:

(1) the division of the district court in which the decedent was a resident at the time of his death, wherever he may have died;

(2) the division of the district court in which the decedent died, leaving estate therein, he not being a resident of the Canal Zone;

(3) any division of the district court in which the decedent leaves estate, he not being a resident of the Canal Zone at the time of his death, and having died out of the Canal Zone or without leaving estate in the division in which he died.

(b) In either of the cases specified by subsection (a)(3) of this section, when the estate is in more than one division, the division of the district court in which application for letters testamentary or of administration is first made has exclusive jurisdiction of the administration and settlement of the estate.

(c) All matters of probate handled by the public administrator may be conducted in the Balboa division of the district court, regardless of the residence of the decedent or the location of the estate.

§ 903. Conclusiveness of order granting letters

An order of the district court granting letters, when it becomes final, is, in the absence of fraud in its procurement, and except when based upon the erroneous assumption of death, a conclusive determination of the jurisdiction of the court, and may not be collaterally attacked.

§ 904. Disqualification of judge for interest, etc.

A will may not be admitted to probate, or letters testamentary or of administration granted, before a judge who is:

(1) interested as next of kin to the decedent;
(2) interested as a devisee or legatee under the will;
(3) named as an executor or trustee in the will;
(4) a witness to the will; or
(5) in any manner interested or disqualified from acting.

CHAPTER 53—PROBATE OF WILLS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—LOST OR DESTROYED WILLS

SUBCHAPTER III—FOREIGN WILLS

Subchapter I—General Provisions

§ 931. Custodian to deliver will to court or executor; consequences of failure

Within 30 days after being informed that the maker of a will is dead, the custodian of the will shall deliver it to the division of the district court having jurisdiction of the estate, or to the executor named in the will. Failure to do so makes the person failing responsible for all damages sustained by anyone injured thereby.

§ 932. Enforcing production of wills and attendance of witnesses

The judge of the district court may at any time make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses. If it is alleged in a petition that someone has possession of a will of a decedent, and the court is satisfied that the

allegation is correct, an order shall be issued and served upon the person alleged to have possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to jail and confined therein until he produces it.

§ 933. Persons who may petition for probate

At any time after the death of the testator, an executor, devisee, or legatee named in his will, or any other person interested in the estate, may petition the division of the court having jurisdiction to have the will proved, whether the will:

(1) be in writing or nuncupative;
(2) be in possession of the petitioner or not;
(3) is lost or destroyed; or
(4) is beyond the jurisdiction of the Canal Zone.

§ 934. Executor's renouncement of right to letters by failure to petition

If the person named in a will as executor, for 30 days after he has knowledge of the death of a testator and that he is named as executor, fails to petition the proper division of the court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

§ 935. Proof of nuncupative will; limitations; time for reduction to writing; notice; subsequent proceedings

Proof of a nuncupative will may not be received unless:

(1) the will is offered within six months after the testamentary words were spoken; and

(2) the words, or the substance thereof were reduced to writing within 30 days after they were spoken, and the writing is filed with the petition for probate thereof.

Notice of the petition shall be given, any contest of the will made and conducted, and subsequent proceedings in administration had, as in the case of a written will.

§ 936. Essential contents of petition for probate; defects

A petition for the probate of a will shall show:

(1) the jurisdictional facts;

(2) whether the person named as executor consents to act, or renounces his right to letters testamentary;

(3) the names, ages, and residences of the heirs, legatees, and devisees of the decedent, so far as known to the petitioner;

(4) the character and estimated value of the property of the estate; and

(5) the name of the person for whom letters testamentary or of administration with the will annexed are prayed.

A defect of form or in the statement of jurisdictional facts actually existing does not make void the probate of a will.

§ 937. Notice of hearing; publication

When a petition for probate of a will is filed, and the will produced, the clerk of the court shall set the petition for hearing by the court not less than 10 nor more than 30 days from the production of the will. The clerk shall publish notice of the hearing in a newspaper of general circulation in the Canal Zone. If the notice is published in a weekly newspaper, it shall appear therein on at least three different days of publication. If it is published in a newspaper pub-

lished oftener than once a week, it shall be so published that there are at least 10 days from the first to the last day of publication, both the first and the last day being included.

§ 938. Notice to heirs and other interested parties

Copies of the notice of the time appointed for the probate of the will shall be addressed to the heirs of the testator and the devisees and legatees named in the will at their places of residence, if known to the petitioner, and deposited in the post office, at least 10 days before the hearing. If their places of residence are not known, the copies of notice may be addressed to them, and deposited in a post office in the Canal Zone. A copy of the notice shall in like manner be mailed to the person named as executor, if he is not the petitioner; also, to any person named as coexecutor not petitioning, if their places of residence are known. Proof of mailing the copies of the notice shall be made at the hearing. Personal service of copies of the notice at least 10 days before the day of hearing is equivalent to mailing.

§ 939. Hearing proof of will and proof of service of notice

At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, shall require proof that the notice has been given, which being made, the court shall hear testimony in proof of the will.

§ 940. Probate of wills not contested

(a) If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if the evidence shows that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

(b) If it appears at the time fixed for the hearing that none of the subscribing witnesses resides in the Canal Zone, but that the deposition of one of them can be taken elsewhere, the court may direct it to be taken, and may authorize a photographic copy of the will to be made and to be presented to the witness on his examination, who may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

(c) If the subscribing witnesses are competent at the time of attesting the execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

(d) If neither the attendance in court nor the deposition of any of the subscribing witnesses can be procured, the court may admit the will to probate upon the testimony of any other witness as provided by section 1033 of this title.

§ 941. Probate of will detained outside Canal Zone

If it is alleged in a petition that a will of a person who at the time of his death was a resident of the Canal Zone is detained beyond the jurisdiction of the Zone, in a court of a State or foreign country, and that the will can not be produced for probate in the Zone, and the court is satisfied that the allegations are true, a copy of the will duly authenticated may be proved, allowed, and admitted to probate in the Zone in lieu of, and have the same force and effect as, the original will. The same proof is required to admit the will to probate in the Zone as would be required by this chapter if the original will were produced.

The court may authorize a photographic copy of the will to be presented to the subscribing witness upon his examination in court, or by deposition as provided by section 940 of this title, and the witness may be asked the same questions with respect to it, and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

§ 942. Holographic wills

A holographic will may be proved in the same manner as other private writings.

§ 943. Record of clerk upon admission to probate

When the court admits a will to probate, the clerk shall record it in the minutes, with the notation: "Admitted to probate [giving date]."

Subchapter II—Lost or Destroyed Wills

§ 961. Duty of court as to proof; notice; reduction of testimony to writing

If a will is lost or destroyed, the court shall take proof of, and establish, the execution and validity of the will, upon notice given to all interested persons, as prescribed in regard to proof of wills in other cases. The testimony given shall be reduced to writing, and signed by the witnesses.

§ 962. Requisites of proof; fraud or public calamity; mentally incompetent person

A will may not be proved as a lost or destroyed will, unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or by public calamity destroyed in the lifetime of the testator, without his knowledge, and unless its provisions are clearly and distinctly proved by at least two credible witnesses; but if the testator is declared mentally incompetent in the Canal Zone and after such a determination his will is destroyed by public calamity, and the testator is never restored to competency, then, after his death, his will may be probated as though it were in existence at the time of his death.

§ 963. Certification, recordation, and grant of letters

When a lost will is established, the provisions thereof shall be distinctly stated and certified by the judge, under his hand and seal of the court. The certificate shall be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed, shall be issued thereon in the same manner as upon wills produced and duly proved. The testimony shall be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence as that provided by section 1035 of this title.

§ 964. Restraining executor or administrator previously appointed pending petition

If, before or pending an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of a previous will of the testator are granted, the court may restrain the executors or administrators, so appointed, from any acts or proceedings that would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Subchapter III—Foreign Wills

§ 981. Allowance and recordation of foreign will; place

A will duly proved and allowed in a State of the United States, or in a foreign country, may be allowed and recorded in the division of the district court having jurisdiction as determined by section 902 of this title.

§ 982. Procedure; notice

The executor, or any person interested in a will described by section 981 of this title, may file a copy of the will and of the order

or decree admitting it to probate, or other evidence of its establishment or proof in accordance with the laws of the State or country, duly authenticated or proved, together with his petition for letters. Notice shall be given and the same proceedings had as in the case of an original petition for the probate of a will.

§ 983. Hearing; effect of probate of foreign will

If, on a hearing held pursuant to section 982 of this title, it appears from the authenticated order or decree referred to in that section, or if it is otherwise proved in a case in which there is no such order or decree, that the will has been admitted to probate in a State of the United States or foreign country, or established or proved in accordance with the laws thereof, and that it was valid according to the laws of the place in which the testator was domiciled at the time of his death, or according to the laws of the Canal Zone, it shall be admitted to probate in the Canal Zone, and have the same force and effect as a will first admitted to probate in the Canal Zone; and letters testamentary or of administration with the will annexed shall issue thereon to the petitioner.

CHAPTER 55—CONTESTS OF WILLS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—CONTESTS BEFORE PROBATE

SUBCHAPTER III—CONTESTS AFTER PROBATE

Subchapter I—General Provisions

§ 1011. Who may appear and contest a will

Any person interested may appear and contest a will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate by the party so represented, if commenced within the time provided by section 1061 of this title; nor does the nonappointment of an attorney by the court of itself invalidate the probate of a will.

Subchapter II—Contests Before Probate

§ 1031. Filing contest; motions; answer

If a person appears to contest the will, he shall file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the Canal Zone interested in the estate. Any one or more of the persons so served may, by motion, assert any defense or objection that a defendant may, by motion, make in a civil

action in the district court, in the form and manner prescribed therefor. If the motion is sustained, the court shall allow the contestant a reasonable time, not exceeding 10 days, within which to amend his written opposition. If the motion is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing, or otherwise obviating or avoiding, the objections.

§ 1032. Trial; parties; issues triable by jury; waiver of jury

(a) On the trial of a contest of a will, the contestant is the plaintiff and the petitioner for probate is the defendant.

(b) An issue of fact involving:

(1) the competency of the decedent to make a will;

(2) the freedom of the decedent, at the time of the execution of the will, from duress, menace, fraud, or undue influence;

(3) the due execution and attestation of the will; or

(4) any other question substantially affecting the validity of the will—

shall, on written request filed by either party at least 10 days prior to the day set for hearing, be tried by a jury.

(c) If a jury is not demanded, the court shall try and determine the issues joined.

§ 1033. Proof of execution of will; witnesses

If a will is contested, all the subscribing witnesses who are present in the Canal Zone, and who are of sound mind, shall be produced and examined; and the death, absence, or mental incompetency of any of them shall be satisfactorily shown to the court. If none of the subscribing witnesses resides in the Canal Zone at the time appointed for proving the will, and the evidence of none of them can be produced, the court may admit the testimony of other witnesses to prove the due execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

§ 1034. Verdict of jury; judgment

The jury, after hearing a proceeding under this subchapter, shall return a special verdict upon the issues submitted to them by the court, upon which the judgment of the court shall be rendered, either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses shall be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs shall be recorded.

§ 1035. Testimony as future evidence

The testimony of each witness in a proceeding under this subchapter, reduced to writing and signed by him, is good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness is dead, or has permanently removed from the Canal Zone.

§ 1036. Certificate of proof and facts

If, in a proceeding under this subchapter, the court is satisfied, upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the judge and attested by the seal of the court, shall be attached to the will.

§ 1037. Filing and recording will and certificate of proof

At the close of a proceeding under this subchapter in which probate is granted, the clerk shall file and record the will, and a certificate of proof thereof. When so filed and recorded, the will and certificate constitute part of the record in the proceeding. The clerk shall also file all testimony given in the proceeding.

Subchapter III—Contests After Probate

§ 1061. Contest within one year; petition

A person interested may, within one year after the probate of a will, contest the probate or validity of the will. For that purpose he shall file in the division of the court in which the will was proved a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate be revoked.

§ 1062. Citation

Upon filing a petition pursuant to this subchapter, and within one year after the probate, a citation shall be issued to the executor of the will, or to the administrator with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Canal Zone, as far as known to the petitioner or to their guardians, if any of them is a minor or is legally incompetent, or to their personal representatives, if any of them is dead, requiring them to appear before the court on a day therein specified, to show cause why the probate of the will should not be revoked.

§ 1063. Proof of service; trial; revocation of probate

At the time appointed for showing cause, or at any time to which the hearing is postponed, proof having been made of service of the citation upon all of the persons named therein, the court shall proceed to try the issues of fact joined in the same manner as an original contest of a will. If the original probate was granted without a contest, a trial by jury shall be had, as in the case of a contest before probate, on written demand of either party, filed three days prior to the hearing. If, upon hearing the proofs of the parties, the jury finds, or, if no jury is had, the court decides, that the will is invalid or is not the last will of the testator, the probate shall be revoked.

§ 1064. Effect of revocation upon executor or administrator

Upon the revocation of the probate of a will, the powers of the executor or administrator with the will annexed shall cease; but he is not liable for any act done in good faith previous to the revocation.

§ 1065. Costs

If, in a proceeding under this subchapter, the will is not revoked, the costs shall be paid by the contestant. If the probate is revoked, the costs shall be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

§ 1066. Conclusiveness of probate; limitations; infants and persons of unsound mind

If the validity or the probate of a will is not contested within one year after the probate, the probate is conclusive; saving to infants and persons of unsound mind a like period of one year after their respective disabilities are removed.

§ 1067. Failure to contest as not precluding probate of another will

Failure to contest a will does not preclude the subsequent probate of another will of the decedent.

CHAPTER 57—EXECUTORS AND ADMINISTRATORS; APPOINTMENT; REMOVAL; SUSPENSIONS

SUBCHAPTER I—APPOINTMENT OF EXECUTORS AND ADMINISTRATORS WITH THE WILL ANNEXED

SUBCHAPTER II—APPOINTMENT OF ADMINISTRATORS

SUBCHAPTER III—PETITION FOR LETTERS; CONTESTS

SUBCHAPTER IV—SPECIAL ADMINISTRATORS

SUBCHAPTER V—FORM OF LETTERS

SUBCHAPTER VI—REVOCATION OF LETTERS

SUBCHAPTER VII—DEATH, DISABILITY AND SUBSTITUTION

SUBCHAPTER VIII—RESIGNATION, SUSPENSION AND REMOVAL

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

Subchapter I—Appointment of Executors and Administrators With the Will Annexed

§ 1101. Competency to serve as executor; marriage

(a) A person is not competent to serve as executor or executrix who, at the time the will is admitted to probate, is:

(1) under the age of majority;

(2) convicted of an infamous crime; or

(3) adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

(b) Marriage does not disqualify a woman from serving as executrix.

§ 1102. Trust companies as executors

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as an executor, in like manner as an individual.

§ 1103. Executor indicated but not specifically named

When it appears, by the terms of a will, that it was the intention of the testator to commit the execution of the will and the administration of his estate to a person as executor, that person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

§ 1104. Invalidity of authority given executor to appoint

An authority to an executor to appoint an executor is void.

§ 1105. Absentee or minor named executor; interim appointment

When a person absent from the Canal Zone, or a minor, is named executor, and there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration, with the will annexed, shall be granted; but the court may revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

§ 1106. Executor of an executor; letters with will annexed

An executor of an executor may not, as such, be authorized to administer on the estate of the first testator. If an executor is not named in the will, or if the sole executor or all the executors, therein named, are dead or incompetent, or renounce, or fail to apply for letters or to appear and qualify, or die after the issuance of letters and before the completion of the administration, letters of administration with the will annexed shall be issued.

§ 1107. Objections to letters testamentary; petition for letters with will annexed; issuance of letters

A person interested in an estate or will may file objections in writing to granting letters testamentary to the persons named as executors, or any of them, and may, at the same time, file a petition for letters of administration with the will annexed. The court shall hear and determine the objections so filed. If an objection is not made, the court, when admitting a will to probate, shall issue letters thereon to the persons named therein as executors who are competent to discharge the trust and who have not renounced their right to letters.

§ 1108. Failure to appoint all named executors

When all the executors named in a will are not appointed by the court, those appointed have the same authority to act in every respect as effectually as all would have if appointed.

§ 1109. Powers before grant of letters

A person has no power as an executor, until he qualifies, except that, before letters are issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

§ 1110. Priority of appointment of administrators with will annexed

Persons are entitled to appointment as administrators with the will annexed in the same order of priority as in the appointment of administrators of intestate estates, except that, as to foreign wills, a person who is interested in the will has priority over one who is not.

§ 1111. Authority of administrators with will annexed; discretionary power

Administrators with the will annexed have the same authority over the estates that executors named in the will would have, and their acts are as effectual for all purposes; but if a power or authority conferred upon an executor is discretionary, and is not conferred by law, it is not conferred upon an administrator with the will annexed.

Subchapter II—Appointment of Administrators

§ 1131. Competency to serve as administrator; marriage

(a) A person is not competent to serve as administrator or administratrix who:

(1) is not a bona fide resident of the Canal Zone; and

(2) does not have the qualifications required of an executor or executrix.

(b) Marriage does not disqualify a woman from serving as administratrix.

§ 1132. Persons entitled to letters; order of priority

Administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his estate or a portion thereof; and they are, respectively, entitled to letters in the following order:

(1) the surviving spouse, or a competent person whom he or she requests to have appointed;

(2) the children;

(3) the grandchildren;

(4) the parents;

(5) the brothers and sisters;

(6) the next of kin entitled to share in the estate;

(7) the relatives of a previously deceased spouse, when they are entitled to succeed to a portion of the estate pursuant to section 549 or 550 of this title;
(8) the public administrator;
(9) the creditors; and
(10) any person legally competent.

§ 1133. Surviving partner

The surviving partner of a decedent may not be appointed administrator of the estate if a person interested in the estate objects to his appointment.

§ 1134. Relatives of whole blood as preferred

Of several persons claiming and equally entitled to administer, relatives of the whole blood shall be preferred to those of the half blood.

§ 1135. Persons equally entitled to letters; creditors

When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters the court, at the request of another creditor, may grant letters to any other person legally competent.

§ 1136. Minors and incompetents; discretion of court

If a person otherwise entitled to administration is a minor, or an incompetent person, letters may be granted, to his or her guardian, or any other person entitled to letters of administration.

§ 1137. Failure of persons having priority to claim letters

Letters of administration shall be granted to any competent applicant, when persons having priority fail to claim letters for themselves.

§ 1138. Letters to persons other than those entitled

Letters of administration may be granted to one or more competent persons, although not otherwise entitled to them, at the written request of the person entitled, filed in the court. When the person entitled is a nonresident of the Canal Zone, affidavits, taken ex parte before an officer authorized by the laws of the Canal Zone to take acknowledgments and administer oaths out of the Canal Zone, may be received as prima facie evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

§ 1139. Trust companies as administrators

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as an administrator, in like manner as an individual.

Subchapter III—Petition for Letters; Contests

§ 1161. Form and contents of petition; filing; defects

(a) A petition for letters of administration shall be in writing, signed by the applicant or his counsel, and filed with the clerk of the court, and shall state the:
(1) jurisdictional facts;
(2) names, ages and post-office addresses of the heirs of the decedent, as far as known to the applicant; and
(3) character and estimated value of the property of the estate.

(b) A defect of form or in the statement of jurisdictional facts actually existing does not make void an order appointing an administrator or any of the subsequent proceedings.

§ 1162. When letters of administration may be granted

Letters of administration may be granted by the court at any time appointed for the hearing of the application, or at any time to which the hearing is continued or postponed.

§ 1163. Setting petition for hearing; notice

When a petition praying for letters of administration is filed, the clerk of the court shall set the petition for hearing by the court, and, at least 10 days before the hearing, give notice thereof by causing a notice to be posted at the courthouse, giving the name of the decedent, the name of the applicant, and the time at which the application will be heard. The clerk shall cause similar notice to be mailed to the heirs of the decedent named in the petition, at least 10 days before the hearing, addressed to them at their respective post-office addresses, as set forth in the petition, otherwise at the place where the proceedings are pending.

§ 1164. Contesting application

A person interested may contest a petition for letters of administration by filing written grounds of opposition thereto, challenging the competency of the applicant, or may assert his own right to letters. In the latter case he shall file a petition and give the notice required for an original petition, and the court shall hear the two petitions together.

§ 1165. Hearing on petition; order

On the hearing of a petition or contest pursuant to this subchapter, upon proof that notice has been given as herein required, the court shall hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

§ 1166. Evidence of notice

An entry in the records of the court, that the required proof was made and notice given, is evidence of the fact of the notice.

§ 1167. Facts to be proved; witnesses

Before letters of administration are granted on the estate of a person who is represented to have died intestate, the fact of his dying intestate shall be proved by the testimony of the applicant or others. The court may also examine any other person concerning the time, place, and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left a will, and may compel any person to attend as a witness for that purpose.

Subchapter IV—Special Administrators

§ 1201. Appointment of special administrator; grounds; public administrator

When:

(1) there is delay in granting letters testamentary or of administration; or

(2) letters are granted irregularly; or

(3) a sufficient bond is not filed as required; or

(4) an application is not made for letters; or

(5) an executor or administrator dies, or is suspended or removed—

the court, if the circumstances of the estate of the decedent require the immediate appointment of a personal representative, shall appoint a special administrator to take charge of the estate in whatever division it may be found, and to exercise such powers as may be necessary for the preservation of the estate; or the court may direct the public administrator to take charge of the estate.

§ 1202. Same; notice; preference

The appointment of a special administrator under this subchapter may be made at any time upon such notice to such of the persons interested in the estate as the court deems reasonable. In making the appointment, the court shall give preference to the person entitled to letters testamentary or of administration.

§ 1203. Bond; oath; letters

A special administrator, other than the public administrator, shall give bond in such sum as the court directs, with sureties to the satisfaction of the court, conditioned for the faithful performance of his duties; and he shall take the usual oath, and have the oath indorsed on his letters. Thereupon, the clerk shall issue special letters of administration to him.

§ 1204. Powers and duties of special administrator

(a) A special administrator shall:

(1) collect and preserve for the executor or administrator all the goods, chattels, debts, and effects of the decedent, and all incomes, rents, issues, profits, claims, and demands of the estate; and

(2) take charge and the management of, enter upon, and preserve the real estate from damage, waste, and injury.

(b) For the purposes of carrying out subsection (a) of this section, and for all necessary purposes, a special administrator may:

(1) commence and maintain or defend suits and other legal proceedings as an administrator;

(2) sell such perishable property as the court orders to be sold; and

(3) exercise such other powers as are conferred upon him by his appointment—

but, except when a special administrator is appointed with the powers, duties, and obligations of a general administrator, as hereinafter provided, he is not liable to an action by a creditor on a claim against the decedent.

§ 1205. Powers and duties when appointed pending will contest or other proceedings

A special administrator appointed pending determination of a contest of a will instituted prior to the probate thereof, or pending an appeal from an order appointing, suspending, or removing an executor or administrator, has the same powers, duties, and obligations as a general administrator, and the letters of administration issued to him shall recite that he is appointed with the powers of a general administrator.

§ 1206. Payment of secured charges on property

If it appears by the verified petition of a special administrator, or other person interested in an estate in the charge of a special administrator, that any of the property of the estate is subject to a mortgage, lien, or deed of trust, to secure the payment of money, and that any amount so secured, either principal or interest, is past due and unpaid; that the holder of the security threatens or is about to enforce or foreclose it and that the property exceeds in value the amount of the entire obligation thereon, and an order is asked directly or permitting the special administrator to pay all or any part of the amount so secured, the court shall fix a time for the hearing of the petition and shall direct notice of not less than 10 days to be given by posting in three public places and by personal service on all parties who have appeared or their attorneys. At the time so appointed, if the allegations of the petition are proved to the satisfaction of the court and it appears to

be for the best interests of the estate, the court may order the special administrator to pay interest or other portions or the whole of the secured debt, and may direct the special administrator to take proceedings to secure funds for the purpose. The order for payment of interest may also direct that interest not yet accrued be paid as it becomes due, and the order shall remain in effect and cover such future interest until and unless thereafter for good cause it is set aside or modified by the court upon petition and notice similar to that hereinabove provided.

§ 1207. Effect of grant of letters testamentary or of administration

When letters testamentary or of administration on the estate of a decedent are granted, the powers of a special administrator appointed pursuant to this subchapter cease. The special administrator shall forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

§ 1208. Verified account; commissions and allowances; attorneys' fees

The special administrator shall render a verified account of his proceedings in like manner as other administrators. His commissions and the fees of his attorney shall be fixed by the court; but the total commissions paid and extra allowances made to the special administrator and executor, or to the special administrator and general administrator of an estate, may not, together, exceed the sums provided for in this title as commissions and extra allowances for the services of executors or administrators; and the total fees paid to the attorneys both of the special administrator and executor, or of the special administrator and general administrator, may not, together, exceed the sums provided by this title as compensation for the ordinary and extraordinary services of attorneys for executors or administrators.

§ 1209. Division of commissions and allowances, and of attorneys' fees

When the same person does not act as both special administrator and executor, or as both special administrator and general administrator, the commissions and allowances referred to in section 1208 of this title shall be divided between the special administrator and the executor, or between the special administrator and the general administrator, in such proportion as the court deems just and reasonable; and when the same attorney does not act for both the special administrator and the executor, or for the special administrator and the general administrator, the fees referred to in section 1208 of this title shall be divided between the attorneys in such proportion as the court deems just and reasonable.

§ 1210. Attorney's fees for extraordinary services

At any time after six months from the issuance of special letters of administration, or upon the earlier settlement of the final account of the special administrator, and upon such notice to the special administrator and to the persons interested in the estate as the court requires, an attorney who has rendered extraordinary services to the special administrator may apply to the court for compensation for the extraordinary services; and on the hearing the court shall make an order requiring the special administrator to pay the attorney out of the estate such compensation as the court deems proper, and the payment shall be made forthwith.

Subchapter V—Form of Letters

§ 1231. Signature of clerk; seal of court

Letters testamentary, or of administration with the will annexed, or of administration, or of special administration, shall be signed by the clerk of the court, under the seal of the court.

§ 1232. Form of letters testamentary

Letters testamentary shall be substantially in the following form:

Canal Zone, ——— division

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the ——— division of the district court, C. D., who is named therein as such, is hereby appointed executor.

Witness, G. H., clerk of the district court, with the seal of the court affixed the ——— day of ———, A.D. 19—.

[SEAL]

By order of the court:

G. H., Clerk.

§ 1233. Form of letters of administration with the will annexed

Letters of administration, with the will annexed, shall be substantially in the following form:

Canal Zone, ——— division

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the ——— division of the district court, and there being no executor named in the will (or as the case may be), C. D. is hereby appointed administrator with the will annexed.

Witness, G. H., clerk of the district court, with the seal of the court affixed, the ——— day of ———, A.D. 19—.

[SEAL]

By order of the court:

G. H., Clerk.

§ 1234. Form of letters of administration, or of special administration

Letters of administration, or of special administration, shall be substantially in the following form:

Canal Zone, ——— division

C. D. is hereby appointed administrator (or special administrator) of the estate of A. B., deceased.

Witness, G. H., clerk of the district court, with the seal thereof affixed, the ——— day of ———, A.D. 19—.

[SEAL]

By order of the court:

G. H., Clerk.

Subchapter VI—Revocation of Letters

§ 1251. Revocation of letters of administration; petition

When letters of administration have been granted to a person other than the surviving spouse, child, grandchild, parent, brother, or sister of the intestate, any one of them who is competent and had a prior right to letters, or any competent person at the written request of any one of them who is competent and had such a prior right, may obtain the revocation of the letters, and be entitled to the administration, by presenting to the court a petition praying the revocation, and that letters of administration be issued to him.

§ 1252. Notice; citation; hearing; order

When a petition is filed pursuant to section 1251 of this title, the clerk shall give notice as in the case of an original application, and shall issue a citation to the administrator to appear and answer the petition at the time appointed for the hearing. At the time appointed, upon proof that the citation has been duly served and notice given as required in this section, the court shall hear the allegations and proofs of the parties. If the right of the applicant is established, and he is competent, letters of administration shall be granted to him and the letters of the former administrator revoked.

§ 1253. Assertion of prior right by surviving spouse or certain relatives

The surviving spouse, when letters of administration have been granted to a child, grandchild, parent, brother, or sister of the intestate; or any of such relatives, when letters have been granted to another of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed by section 1251 and 1252 of this title.

§ 1254. Court's discretion to refuse letters

The court may refuse to grant letters of administration, as provided by this subchapter, to a person or to the nominee of a person who had actual notice of the first application and an opportunity to contest it.

Subchapter VII—Death, Disability and Substitution

§ 1271. Revocation of letters upon subsequent probate; accounting; powers of new appointee

Upon the admission to probate of a will after a grant of letters of administration on the ground of intestacy, or upon the admission to probate of a later will than the one before admitted to probate, the pre-existing grant of letters testamentary or of administration shall be revoked, and the administrator or executor whose grant of authority is thus terminated shall render an account of his administration within such time as the court directs. The newly appointed executor or administrator with the will annexed may demand, sue for, recover, and collect all the property of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the previous administrator before the revocation of his letters of administration.

§ 1272. Death or disqualification of one of several executors or administrators

If one of several executors or administrators, to whom letters are granted, dies, becomes mentally incompetent, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust; or if the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator shall proceed to complete the execution of the will or administration.

§ 1273. Death or disqualification of all executors or administrators; bond of new appointees

If all the executors or administrators of an estate die or become incapable, or the power and authority of all of them is revoked, the court shall issue letters of administration, with the will annexed or otherwise, to the person or persons next entitled thereto, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions, as required of administrators, and shall have the like power and authority.

Subchapter VIII—Resignation, Suspension and Removal

§ 1291. Resignation of executor or administrator and appointment of successor; liability

An executor or administrator may, at any time, by a writing filed in the district court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the court appoints to receive it. If, however, by reason of delays in the settlement and delivery up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of the executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, is not discharged, released, or affected by the appointment or resignation.

§ 1292. Suspension of powers; grounds; citation; notice

When the district judge has reason to believe from his own knowledge, or from credible information, that an executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or has removed or is about to remove from the Canal Zone, or has wrongfully neglected the estate, or has long neglected to perform any act as executor or administrator, the judge shall, by an order entered upon the minutes of the court, direct the executor or administrator to be cited to appear and show cause why his letters should not be revoked, and may also suspend the powers of the executor or administrator, until the matter is investigated. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Canal Zone, notice may be given him of the pendency of the proceedings by publication, in such manner as the court directs, and the court may proceed upon the notice as if the citation had been personally served.

§ 1293. Same; appearance and allegations of interested parties; procedure

At a hearing pursuant to section 1292 of this title, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may, by motion, assert any defense or objection that a defendant may, by motion, make in a civil action in the district court, in the form and manner prescribed therefor. If the motion is sustained, the court shall allow the person so appearing not more than 10 days within which to amend his written allegations. If the motion is overruled, the executor or administrator shall answer the allegations, traversing, or otherwise obviating them. The court shall hear and determine the issues raised.

§ 1294. Same; hearing; revocation of letters; compelling attendance and testimony

If the executor or administrator fails to appear in obedience to the citation referred to in section 1292 of this title, or, if he appears, and the court is satisfied from the evidence, that there exists cause for his removal, the court shall revoke his letters. The court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and, upon his refusal so to do, may commit him until he obeys, or may revoke his letters, or both.

§ 1295. Revocation for embezzlement, waste or mismanagement

If, upon the settlement of an account of an executor or administrator, it appears that he has embezzled, wasted or mismanaged the estate, the court shall revoke his letters.

§ 1296. Revocation for contempt

When an executor or administrator is committed for contempt in disobeying a lawful order of the court, and has remained in custody for 30 days without obeying the order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint another person entitled thereto to succeed him.

§ 1297. Validity of acts prior to revocation

All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are as valid, to all intents and purposes, as if the executor or administrator had continued lawfully to execute the duties of his trust.

Subchapter IX—Miscellaneous Provisions

§ 1321. Acts of remaining executors or administrators where one or more absent or disqualified

Where there are two executors or administrators, the act of one alone is effectual, if the other is absent from the Canal Zone, or laboring under a legal disability from serving, or if he has given his coexecutor or coadministrator authority, in writing, to act for both. Where there are more than two executors or administrators, the act of a majority is valid.

§ 1322. Transcript of court minutes as evidence

A transcript from the records of the court, showing the appointment of a person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that the person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, has the same effect in evidence as the letters themselves.

CHAPTER 59—OATHS AND BONDS

SUBCHAPTER I—OATHS

SUBCHAPTER II—BONDS

Subchapter I—Oaths

§ 1351. Oath of executor or administrator; recording letters

Before letters testamentary or of administration are issued to the executor or administrator, he shall take and subscribe an oath before an officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator. The oath shall be attached to the letters. Letters testamentary, and of administration, with the affidavits and certificates thereon, shall be forthwith recorded by the clerk of the court, in books to be kept by him in his office for that purpose.

§ 1352. Oaths and affidavits of trust companies

If it is required that an executor or administrator shall qualify by taking and subscribing an oath, or an affidavit is required, it is a sufficient qualification by a corporation or association receiving an appointment as executor or administrator if the oath is taken and subscribed, or the affidavit is made, by the president, vice-president, secretary, manager, trust officer, or assistant trust officer thereof.

Subchapter II—Bonds

§ 1371. Bond of executor or administrator; conditions

A person to whom letters testamentary or of administration are directed to issue, shall, before receiving them, execute a bond to the Government of the Canal Zone, with two or more sufficient sureties, to be approved by the district court. In form the bond shall be joint and several, and the penalty shall be in such reasonable sum as the court directs; and the bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

§ 1372. Requiring bond notwithstanding provision of will

When it is provided in a will that a bond may not be required of the executor, the court, nevertheless, for good cause, may require one to be given as in other cases, either before or at any time after the issuance of letters.

§ 1373. Bonds by several executors or administrators

When two or more persons are appointed executors or administrators, the court shall require and take a separate bond from each of them.

§ 1374. Justification of sureties

Where bonds or undertakings are required to be given pursuant to this title, the sureties shall justify thereon in the same manner and in like amounts as required by section 431 of Title 3, and the certificate thereof shall be attached to and filed with the bond or undertaking. The bonds and undertakings may not be filed until approved by the court. Upon filing, the clerk shall thereupon enter in an appropriate book the date and amount of the bond or undertaking and the name or names of the surety or sureties thereon. If the bond or undertaking is lost, the entries so made shall be prima facie evidence of the due execution of the bond or undertaking as required by law.

§ 1375. Same; citation; examination; additional security

Before the court approves a bond required under this title, or after its approval, it may, of its own motion, or upon the motion of a person interested in the estate, supported by affidavit that the sureties, or one or more of them, are not worth as much as they have justified to, order a citation to issue requiring them to appear before it at a

designated time and place, to be examined concerning their property and its value. At the same time, the court shall cause a notice to be issued to the executor or administrator requiring his appearance on the return of the citation. On its return the court may examine the sureties and such witnesses as may be produced, concerning the property of the sureties and its value; and if, upon the examination, it is satisfied that the bond is insufficient, it shall require sufficient additional security.

§ 1376. Insufficiency of sureties or bond; additional security

A person interested in an estate may, by verified petition, represent to the court that the sureties of the executor or administrator thereof have become, or are becoming, insolvent, or that they have removed, or are about to remove, from the Canal Zone, or that from any other cause the bond is insufficient, and ask that further security be required; or if it comes to the knowledge of the court that the bond is, from any cause, insufficient, the court may, of its own motion, without an application, require further security.

§ 1377. Inquiry as to sufficiency; citation; hearing; order

If the court is satisfied from a petition filed pursuant to section 1376 of this title, or from its own information, that the question of sufficiency of the sureties or bond of an executor or administrator requires investigation, it shall cause a citation to be issued to the executor or administrator requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or can not be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court orders. On the return of the citation, or at such other time as the court appoints, it shall proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is, from any cause, insufficient, the court shall make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form within a reasonable time, not less than five days.

§ 1378. Failure to comply with order for additional or sufficient security

If sufficient or additional security is not given within the time fixed by the court's order pursuant to section 1377 of this title, the right of the executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, shall be appointed to the administration. If letters have already been issued to the executor or administrator, they shall be revoked, and his authority shall thereupon cease.

§ 1379. Suspension of powers pending hearing

When a petition is presented praying that an executor or administrator be required to give further security, or to give bond, where, by the terms of the will, a bond was not originally required, and it is alleged, on oath, that the executor or administrator is wasting the property of the estate, the court, by order, may suspend his powers until the matter can be heard and determined.

§ 1380. Application for release of surety; citation; service

When a surety of an executor or an administrator desires to be released from responsibility on account of future acts, he may make application to the court for relief. The court shall cite the executor or administrator to appear at a designated time and place and give other security. The citation shall be served personally, or, if the

executor or administrator has absconded, left, or removed from the Canal Zone, or if he can not be found after due diligence and inquiry, it may be served in the manner provided by section 1377 of this title.

§ 1381. Same; neglect or refusal to give new sureties

If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the court, on the return of the citation issued pursuant to section 1380 of this title, or within such reasonable time as the court allows, unless the surety making the application consents to a longer extension of time, the court, by order, shall revoke his letters.

§ 1382. Same; discharge of sureties if new sureties given

If, in a proceeding pursuant to section 1380 of this title, new sureties are given to the satisfaction of the court, it may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

§ 1383. Applications to be determined at any time

The applications authorized by sections 1376 and 1380 of this title may be heard and determined at any time. All orders made therein shall be entered upon the records of the court.

§ 1384. Successive actions on bond

The bond of an executor or administrator is not void upon the first recovery, but may be sued and recovered upon from time to time, by a person aggrieved, in his own name, until the whole penalty is exhausted.

CHAPTER 61—POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

Sec.

§ 1411. Possession of estate

The executor or administrator shall take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of the estate, the possession of the executors or administrators is the possession of the heirs or devisees; but in such cases, the possession by the heirs or devisees is subject to the possession of the executor or administrator for the purposes of administration, as provided in this title.

§ 1412. Partnership property; settlement; accounting

When a partnership exists between the decedent, at the time of his death, and another person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership shall be included in

the inventory, and be appraised as other property. The surviving partner shall settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him, in right of the decedent. Upon the application of the executor or administrator, the court may, if it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decendent could have maintained.

§ 1413. Operation of business of decedent

After notice to all persons interested in an estate, given in such manner as the court directs, the court may authorize the executor or administrator to continue the operation of the decedent's business to such an extent and subject to such restrictions as the court considers to be for the best interest of the estate and those interested therein.

§ 1414. Actions by and against executors and administrators

Actions for the recovery of property, real or personal, or for the possession thereof, or to quiet title thereto, or to enforce a lien thereon, or to determine an adverse claim thereon, and all actions founded upon contracts, or upon a liability for physical injury, death, or injury to property, may be maintained by and against executors and administrators in all cases in which the cause of action, whether arising before or after death, is one that would not abate upon the death of their respective testators or intestates.

§ 1415. Actions for waste, destruction, taking, conversion, or trespass

Executors and administrators may maintain an action against a person who has wasted, destroyed, taken, or carried away, or converted to his own use, the property of the decedent, in his lifetime, or committed a trespass on the real estate of the decedent in his lifetime; and a person or his personal representatives may maintain an action against the executor or administrator of a decedent who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the property of such person, or committed a trespass on his real estate. This section does not apply to an action founded upon a wrong resulting in physical injury or death of a person.

§ 1416. Actions on bond of former executor or administrator

An executor or administrator may, in his own name, maintain actions on the bond of a former executor or administrator of the same estate, for the use and benefit of all parties interested in the estate.

§ 1417. Unqualified executors as parties

In actions by or against executors, it is not necessary to join as parties those to whom letters were ordered to be issued, but who have not qualified.

§ 1418. Compounding or compromising with debtor

If a debtor of the decedent is unable to pay all his debts, the executor or administrator, with the approval of the court, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects. The court may also authorize a compromise when it appears to be just, and for the best interest of the estate.

§ 1419. Recovery of fraudulently conveyed property

If a decedent, in his lifetime, conveyed real or personal property, or rights or interests therein, with intent to defraud his creditors, or to avoid an obligation due another, or made a conveyance

that by law is void as against creditors, or made a gift of property in view of death, and there is a deficiency of assets in the hands of the executor or administrator, the latter, on application of a creditor, shall commence and prosecute to final judgment an action for the recovery of the property for the benefit of the creditors.

§ 1420. Same; costs; sale of property recovered; proceeds

A creditor making application pursuant to section 1419 of this title shall pay such part of the costs and expenses of the action, or give such security to the executor or administrator therefor, as the court directs. Property so recovered shall be sold for the payment of debts, in the same manner as if the decedent had died seised or possessed thereof, upon obtaining an order therefor from the court; and the proceeds shall be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator. The remainder of the proceeds, after the debts of the decedent have been paid, shall be paid to the person from whom the property was recovered.

§ 1421. Custody and management of property; recovery of possession; joinder in possessory or title actions

The executor or administrator is entitled to the possession of all real and personal property of the decedent, and to receive the rents and profits of the real property until the estate is settled or until delivered over by the order of the court to the heirs or devisees; and shall keep in good tenantable repair all houses, buildings, and fixtures thereon which are under his control. After the time to present claims has expired, he is not entitled to recover the possession of any property of the estate from an heir who has succeeded to the property in his possession, or from a devisee or legatee to whom the property has been devised or bequeathed, or from an assignee thereof, unless he proves that the recovery is necessary for the payment of debts or legacies, or of expenses of administration already accrued, or for distribution to another heir, devisee or legatee entitled thereto. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real property, or for the purpose of quieting title thereto, against anyone except the executor or administrator; but they are not required to do so.

§ 1422. Delivery of real property to heirs or devisees

When the time to present claims has expired, the executor or administrator shall deliver possession of the real property to the heirs or devisees, unless the court determines that the receipt of the income from the property for a longer period is necessary, or that the sale of the property probably will be necessary, for the payment of the debts of the decedent.

§ 1423. Purchase of claims against estate

An administrator or executor may not purchase a claim against the estate he represents; and if he pays a claim for less than its nominal value he is only entitled to charge in his account the amount he actually paid.

§ 1424. Deposit of funds

The court may order an executor or administrator to deposit funds of an estate coming into his hands, in a bank or banks or other depositary, to be designated by the court, in his name with the designation of his fiduciary capacity. The court may direct him to deposit any or all the funds in an interest-bearing account. This section does not relieve an executor or administrator from any duty otherwise imposed by law.

§ 1425. Investment of moneys of estate pending settlement

Pending the settlement of an estate, on the petition of a person interested therein, and upon good cause shown therefor, the court may order any money in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or in federally guaranteed savings and loan associations or in such other securities as the court approves and allows.

The clerk shall set the petition for hearing by the court and cause a notice of the time and place of hearing thereof to be posted at the courthouse of the division where the proceedings are pending, at least 10 days before the day of hearing, giving the name of the estate, the name of the petitioner and the nature of the application, referring to the petition for further particulars.

At least 10 days before the time set for the hearing of the petition, the petitioner shall cause notice of the time and place of hearing thereof to be mailed to the executor or administrator, when he is not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or to their attorneys, if they have appeared by attorney), who have requested notice or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, addressed to them at their respective post-office addresses given in their requests for special notice, if any, otherwise at their respective offices or places of residence, if known, and, if not, at the division where the proceedings are pending, or to be personally served upon them.

Proof of the giving of notice shall be made at the hearing; and if it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order, and the order, when it becomes final, is conclusive upon all persons.

CHAPTER 63—INVENTORY, APPRAISEMENT, AND COLLECTION OF PROPERTY

SUBCHAPTER I—INVENTORY, APPRAISEMENT, AND POSSESSION OF ESTATE

SUBCHAPTER II—EMBEZZLEMENT AND SURRENDER OF PROPERTY

Subchapter I—Inventory, Appraisement, and Possession of Estate

§ 1461. Time for returning; contents

(a) Within 30 days after his appointment, or within such further period as the court, for reasonable cause, allows, the executor or administrator shall make and return to the court a true inventory, and, if the court directs, an appraisement of all the estate of the decedent which has come to his possession or knowledge.

(b) The inventory shall:

(1) contain a statement of all the estate, real and personal, of the decedent;

(2) contain a statement of all debts, bonds, mortgages, deeds of trust, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each debt or security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt or security;

(3) contain a statement of the interest of the decedent in any partnership of which he was a member, to be appraised as a single item;

(4) contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator, and, if none, a statement of that fact; and

(5) show, as far as it can be ascertained by the executor or administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

§ 1462. Testator's claims against executor; inclusion in inventory

The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him. The claim shall be included in the inventory, and the executor is liable for it, as for so much money in his hands, when the debt or demand becomes due.

§ 1463. Same; bequest to executor; nature and effect

The discharge or bequest in a will of a debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It shall be included in the inventory, and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

§ 1464. Oath to inventory

The executor or administrator shall take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his possession or knowledge, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath shall be indorsed upon or annexed to the inventory.

§ 1465. Appointment of appraisers; incompetency of certain persons

(a) To make an appraisement, the court shall appoint three disinterested persons, any two of whom may act.

(b) A clerk or deputy of the court, or a person related by consanguinity or affinity to, or connected by marriage with, or being a partner or employee of, the judge of the court, may not be appointed, and is not competent, to act as appraiser in an estate, or matter or proceeding pending before the judge or in his court.

§ 1466. Oath of appraisers; appraisement procedure

Before proceeding to the execution of their duty, the appraisers shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them, according to the best of their knowledge and ability. They shall appraise the property by setting down each item sepa-

rately, with the value thereof in dollars and cents in figures, opposite the respective items.

§ 1467. Compensation of appraisers; verified account

An appraiser shall receive from each estate he appraises, as compensation for his services, such sum as the court fixes. He shall file, with the inventory, a verified account of his services and disbursements.

§ 1468. Failure to return inventory

If an executor or administrator neglects or refuses to return the inventory within the time prescribed by section 1461 of this title, or by the court under authority of that section, the court may, upon notice, revoke his letters, and he is liable on his bond for any injury to the estate or a person interested therein, arising from his neglect or refusal.

§ 1469. After-discovered property

When property not mentioned in an inventory that is made and returned, comes to the possession or knowledge of an executor or administrator, he shall cause it to be appraised in the manner prescribed in this chapter, and an inventory thereof to be returned within two months after the discovery. The making of the inventory may be enforced, after notice, by attachment or removal from office.

Subchapter II—Embezzlement and Surrender of Property

§ 1491. Double liability for embezzling property

If a person embezzles, conceals, smuggles, or fraudulently disposes of any property of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled, concealed, smuggled, or fraudulently disposed of, to be recovered for the benefit of the estate.

§ 1492. Citation and examination of suspected embezzler, etc., expenses

Upon complaint made under oath by an executor, administrator, or other person interested in the estate of a decedent, that a person is suspected of having concealed, embezzled, smuggled, or fraudulently disposed of any property of the decedent, or has in his possession or knowledge any deed, conveyance, bond, contract, or other writing, which contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to real or personal estate, or a claim or demand, or a lost will, the court may cite the suspected person to appear before the court, and may examine him on oath upon the matter of the complaint. If he appears and is found innocent, his necessary expenses shall be allowed him out of the estate.

§ 1493. Enforcement of examination of suspected embezzler, etc.; compelling disclosure; interrogatories; witnesses

If a person cited pursuant to section 1492 of this title refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, concerning the matters of the complaint, he may, by warrant from the court, be committed to jail and confined therein until he submits to the order of the court or is discharged according to law. If, upon the examination, it appears that he has concealed, embezzled, smuggled, or fraudulently disposed of any property of the decedent, or that he has in his possession or knowledge any of the papers or documents referred to in section 1492 of this title, the court may make an order requiring him to disclose his knowledge thereof

to the executor or administrator; and he may be committed to jail and confined therein until the order is complied with, or he is discharged according to law. All interrogatories and answers shall be in writing, signed by the party examined, and filed in the court. In addition to the examination of the party, witnesses may be produced and examined on either side.

§ 1494. Requiring persons intrusted with estate to account

Upon complaint made under oath by an executor or administrator, the court may cite a person who has been intrusted with any part of the estate of the decedent to appear before the court, and require him to render a full account, on oath, of any moneys, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon. If the person so cited refuses to appear and render the account, the court may proceed against him as provided in section 1493 of this title.

CHAPTER 65—DISPOSITION OF ESTATES WITHOUT ADMINISTRATION

SUBCHAPTER I—TRANSFER OF PERSONAL PROPERTY NOT EXCEEDING CERTAIN AMOUNTS

SUBCHAPTER II—SETTING ASIDE ESTATES NOT EXCEEDING $3,000 IN VALUE

Subchapter I—Transfer of Personal Property Not Exceeding Certain Amounts

§ 1521. Personal property not exceeding $100; summary probate; affidavit of right

When a decedent does not leave real property, or interest therein or lien thereon, in the Canal Zone, and the total value of the decedent's property in the Canal Zone, over and above any amounts due to the decedent for services in the Armed Forces of the United States, does not exceed $100, the surviving spouse, the children, lawful issue of deceased children, the parent, the brother or sister of the decedent, the lawful issue of a deceased brother or sister, or the guardian of the estate of a minor or incompetent person bearing such relationship to the decedent, if that person has a right to succeed to the property of the decedent, or is the sole beneficiary under the last will and testament of the decedent, may, without procuring letters of administration, or awaiting the probate of the will,

(1) collect any money due the decedent,

(2) receive the property of the decedent, and

(3) have transferred to him any evidences of interest, indebtedness or right

upon furnishing to the person, representative, corporation, officer or body owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, indebtedness or right, an affidavit showing the right of the affiant or affiants to collect the money, receive the property, or have the evidences transferred.

§ 1522. Surviving spouse's right to $500 from bank deposits; affidavit

Whether a person dies testate or intestate, and irrespective of the character of his or her property, the spouse of the decedent, if entitled by succession or by the last will and testament of the decedent to any money of the decedent on deposit in a bank, may collect the money, not to exceed the total sum of $500, without procuring letters testamentary or of administration, upon furnishing the bank with an affidavit showing the right of the affiant to receive the money.

§ 1523. Affidavit of right; effect of receipt

The receipt of the affiant as provided by section 1522 of this title constitutes sufficient acquittance for any payment of money or delivery of property made pursuant to this subchapter and discharges the person, representative, corporation, officer or body so paying or delivering it from any further liability with reference thereto, without the necessity of inquiring into the truth of the facts stated in the affidavit. But the payment or transfer does not preclude administration when necessary to enforce payment of the decedent's debts.

§ 1524. Same; claim against estate in probate; procedure

If the money or property claimed pursuant to this subchapter is that of a deceased heir or legatee of a person whose estate is in probate, the personal representative of the person whose estate is in probate shall first present the affidavit to the division of the court in which the estate is being probated and the court shall direct him to pay the money or deliver the property to the affiant or affiants to the extent that the decree of distribution determines that the heir or legatee was entitled thereto under the will or the laws of succession.

Subchapter II—Setting Aside Estates Not Exceeding $3,000 in Value

§ 1541. Authority to set aside estate

When a decedent leaves a surviving spouse or minor child or minor children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and not including the property excepted from administration pursuant to section 522 of this title, does not exceed the sum of $3,000, it may be set aside to the surviving spouse, if there is one, and if there is none, then to the minor child or minor children of the decedent.

§ 1542. Petition to set aside estate; allegations; time; verification; contents

(a) Allegations showing that this subchapter is applicable, together with a prayer that the estate be set aside as provided in this subchapter, may be included alternatively in the petition for probate of the will or for letters of administration; or the allegations and prayer may be presented by a separate petition filed in the court by the personal representative of the decedent, or the surviving spouse, or the guardian of the minor child or minor children, filed at any time before the hearing on the petition for probate of the will or for letters of administration, or after the filing of the inventory.

(b) The petition for probate of the will or for letters of administration, in which the allegations and prayer are included alternatively, as provided by subsection (a) of this section, or a separate petition, as therein provided, shall be verified; and the allegations shall include a specific description, and an estimate of the value, of all the decedent's property, a list of liens and encumbrances at the date of death, and a designation of property excepted from administration pursuant to section 522 of this title.

§ 1543. Statement in notice, if allegations included in petition for probate or letters

If the allegations and prayer as provided by section 1542 of this title are included in the petition for probate of the will or for letters of administration, the notice of hearing shall include a statement that a prayer for setting aside the estate to the surviving spouse or minor child or minor children, as the case may be, is included in the petition.

§ 1544. Fixing time of hearing; notice; proceedings under separate petition

If a separate petition is filed as provided by section 1542 of this title, the clerk shall fix a day for the hearing thereof and shall give notice for the period and in the manner provided by section 1583 of this title. If the hearing of the original petition for probate of the will or for letters of administration is set for a day more than 10 days after the filing of the separate petition, the latter shall be set for hearing at the same time as the former; if not, the separate petition shall be set for hearing at least 10 days after the date on which it is filed, and if the original petition has not been heard, it shall be continued until the date for the separate petition and heard at the same time.

§ 1545. Decree of assignment; title; restriction on right

(a) If, upon the hearing of a petition provided for by this subchapter, the court finds that the net value of the estate, over and above all liens and encumbrances at the date of the death of the decedent and not including the property excepted from administration under section 522 of this title, does not exceed the sum of $3,000, as of the date of death of the decedent, that the expenses of the last illness, funeral charges, and expenses of administration have been paid, and that subsection (b) of this section does not apply to the particular case, it shall, by decree for that purpose, assign to the surviving spouse of the decedent, if there is a surviving spouse, or, if there is no surviving spouse, then to the minor child or minor children of the decedent, if any, the whole of the estate, subject to whatever mortgages, liens, or encumbrances there may be upon the estate at the time of the death of the decedent. The title thereto shall vest absolutely in the surviving spouse, if there is a surviving spouse, or if there is no surviving spouse, in the minor child or minor children, subject to whatever mortgages, liens, or encumbrances there may be upon the estate at the time of the death of the decedent, and there shall be no further proceedings in the administration, unless further estate is discovered.

(b) A surviving spouse or minor child is not entitled to an assignment under this subchapter, if the spouse or child has other estate, including the total value of any property held by either in joint tenancy with the decedent and the value of any property excepted from administration pursuant to section 522 of this title, the net value of which, over and above all liens and encumbrances, exceeds the sum of $5,000.

§ 1546. Denying assignment and acting on petition for probate or letters

If the court finds that the net value of the estate exceeds $3,000, or that the surviving spouse or minor child has other estate of $5,000 in value, or that there is neither a surviving spouse nor minor child, it shall act upon the petition for probate or for letters of administration in the same manner as though a petition to set aside the estate had not been included, and the estate shall then be administered in the usual manner.

CHAPTER 67—SUPPORT OF THE FAMILY

Sec.

§ 1581. Possession of certain property pending inventory; support allowance

When a decedent leaves a widow or minor children, the widow or children, until letters are granted and the inventory is returned, may remain in possession of all the wearing apparel of the family, and of all the household furniture of the decedent. They are also entitled to a reasonable provision for their support, to be allowed by the court.

§ 1582. Setting apart property exempt from execution

Upon the return of the inventory referred to in section 1581 of this title, or at any subsequent time during the administration, the court may, on petition therefor, set apart for the use of the surviving spouse, or, in case of the spouse's death, to the minor children of the decedent, all the property exempt from execution.

§ 1583. Same; setting petition for hearing; notice

When the petition referred to in section 1582 of this title is filed, the clerk of the court shall set the petition for hearing by the court and cause notices to be posted in at least three public places in the division, one of which shall be at the place where the court is held, containing the name of the decedent, the name of the petitioner, the nature of the application, and the time at which the petition will be heard. The notice shall be given at least 10 days before the hearing, and a copy thereof shall be mailed at least 10 days before the day appointed for the hearing to the executor or administrator, if he is not the petitioner, and to any person named as coexecutor or coadministrator not petitioning, and to the attorneys of all persons who have appeared or given notice of appearance, by attorneys, in the estate as heirs, legatees, devisees, next of kin, or creditors, or as otherwise interested, addressed to them at their places of residence, or office, if known, and if not known, then to the place where the proceedings are pending. Proof of the posting and mailing shall be made at the hearing.

§ 1584. Extra allowance

If the property set apart is insufficient for the support of the widow and children, or either, the court shall take such reasonable allowance out of the estate as is necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, may not be longer than one year after granting letters testamentary or of administration.

§ 1585. Payment of allowance

An allowance made by the court in accordance with the provisions of this chapter shall be paid in preference to all other charges, except funeral expenses and the expenses of the last illness of the decedent and expenses of administration; and the allowance, whenever made, may, in the discretion of the court, take effect from the death of the decedent.

§ 1586. Apportionment of property set apart

Property set apart to the use of the family in accordance with this chapter, if the decedent left a surviving spouse and no minor child, is the property of the spouse. If the decedent left also a minor child or minor children, one-half of the property belongs to the surviving spouse, and the remainder to the child, or in equal shares to the children, if there are more than one. If there is no surviving spouse, the whole belongs to the minor child or minor children.

CHAPTER 69—CLAIMS AGAINST THE ESTATE

SUBCHAPTER I—PRESENTATION OF CLAIMS

SUBCHAPTER II—RULES GOVERNING PAYMENT OF CLAIMS

Subchapter I—Presentation of Claims

§ 1621. Notice to creditors; effect of death, etc., of executor or administrator; time for filing claims

(a) An executor or administrator shall, immediately after his letters are issued, cause to be published in a newspaper of general circulation in the Canal Zone, a notice to the creditors of the decedent, requiring all persons having claims against the decedent to file them, with the necessary vouchers, in the office of the clerk of the court, or to present them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business to be specified in the notice. The notice shall be published not less than once a week for four successive weeks. If the executor or administrator dies, resigns, or is removed, before the time expressed in the notice, his successor shall give notice only for the unexpired time allowed for the filing or presentation of claims.

(b) The court may dispense with publication of the notice required by subsection (a) of this section, and direct that notice be

given by posting in three public places in the Canal Zone for a period of four successive weeks.

(c) The time expressed in the notice required by this section shall be 10 months after it is first published or posted, when the estate exceeds in value the sum of $20,000, and 4 months when it does not.

§ 1622. Removal for neglecting to give notice

If an executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this subchapter, the court shall revoke his letters, and appoint another person in his stead, equally or the next in order entitled to the appointment.

§ 1623. Filing copy of notice; affidavit; decree

Within 30 days after the first publication of notice to creditors, the executor or administrator shall file or cause to be filed in the court a copy of the notice, accompanied by an affidavit setting forth the date of the first publication thereof and the name of the newspaper in which it is printed, or the dates and places of posting of the notice, if the posting of notices is directed. The court, upon the affidavit or other testimony to its satisfaction, shall issue an order or decree showing that notice to creditors has been given, and directing that the order or decree be entered in the records of the court.

§ 1624. Executor's or administrator's claim; presentation; allowance or rejection; action

If the executor or administrator is a creditor of the decedent, he shall file his claim, authenticated by affidavit, with the clerk of the court. The clerk shall present it for allowance or rejection to the judge. Its allowance by the judge is sufficient evidence of its correctness, and it shall be paid as other claims in due course of administration. If the judge rejects the claim, action thereon may be had against the estate by the claimant, and summons shall be served upon the judge, who may appoint an attorney, at the expense of the estate, to defend the action. If the claimant fails to recover, he shall pay all costs, including the defendant's reasonable attorney's fees, to be fixed by the court.

§ 1625. Affidavits in support of claims; claims not due; contingent claims; vouchers

(a) Every claim that is due, when filed or presented, shall be supported by the affidavit of the claimant, or by a person in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the claim, to the knowledge of the affiant. If the claim is not due when filed or presented, or is contingent, the particulars of the claim shall be stated. When the affidavit is made by a person other than the claimant, he shall set forth in the affidavit the reason therefor. The oath may be taken before any officer authorized to administer oaths.

(b) The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the claimant leaves an original voucher in the hands of the executor or administrator, or suffers it to be filed with the clerk, he may withdraw it, when a copy thereof has been already, or is then, attached to his claim.

§ 1626. Claim founded on written instrument; copy; secured claim

(a) Where a claim is founded on a written instrument, the original need not be filed or presented, but a verified copy of the instrument with all indorsements shall be attached to the claim. The original instrument shall be exhibited to the executor or administrator or judge, upon demand, unless it is lost or destroyed, in which case

the claimant shall accompany his claim, when filed or presented, by his affidavit, containing a copy or particular description of the instrument, and stating its loss or destruction.

(b) Where the claim, or any part thereof, is secured by a mortgage or other lien which has been recorded in the office of the registrar of property, it is sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record.

§ 1627. Claims not filed on time are barred; exception

(a) Claims arising upon contracts, whether they are due, not due, or contingent, and claims for funeral expenses and expenses of the last sickness shall be filed or presented within the time limited in the notice, and, except as provided by subsection (b) of this section, a claim not so filed or presented is barred forever.

A brief description of every claim filed shall be entered by the clerk in the appropriate book, showing the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

(b) A claim specified by subsection (a) of this section may be filed or presented at any time before a decree of distribution is entered, if it is made to appear by the affidavit of the claimant that, by reason of being out of the Canal Zone, he had not notice as provided by this subchapter.

§ 1628. Record of claims filed

The clerk of the court shall enter in the appropriate book a brief description of every claim filed, showing the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

§ 1629. Claims barred by limitations; examination of claimants; suspension of limitations pending administration

A claim may not be allowed by the executor or administrator, or by the judge, if it is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may examine the claimant and others, on oath, and hear legal evidence touching the validity of the claim. A claim against an estate which has been allowed is not affected by the statute of limitations, pending the proceedings for the settlement of the estate.

§ 1630. Claim in action pending at decedent's death

If an action is pending against the decedent at the time of his death, the plaintiff shall, in the manner provided by this subchapter, file his claim with the clerk, or present it to the executor or administrator for allowance or rejection, authenticated as required in other cases. A recovery may not be had in the action unless proof is made of the filing or presentation.

§ 1631. Claims filed with clerk; notice to executor or administrator; allowance or rejection

When a claim, accompanied by the affidavit required by this subchapter, is filed with the clerk of the court before being presented to the executor or administrator, the clerk shall immediately send written notice thereof to the executor or administrator, or his attorney. The clerk shall show in the notice the name of the claimant and the amount of the claim, and he may deliver it personally or mail it. The executor or administrator shall, in writing, allow or reject the claim, and shall file the allowance or rejection with the clerk. If he allows the claim, the clerk, immediately after the filing of the allowance, shall present the claim and the allowance to the judge, and at the same time shall indorse on the claim the date of presentation. The judge shall indorse upon the claim so filed his allowance or rejection, with the date thereof.

§ 1632. Claims presented to executor or administrator; allowance or rejection

When a claim, accompanied by the affidavit required by this subchapter, is presented to the executor or administrator before filing, he shall indorse thereon his allowance or rejection, with the date thereof. If he allows the claim, it shall be presented to the judge for approval. The judge shall, in like manner, indorse upon the claim his approval or rejection. If the claim is approved, it shall be filed with the clerk within 30 days thereafter.

§ 1633. Failure to act on claim; presentation by notary; acting on timely claim after time

(a) If, where a claim has been filed without presentation, the executor or administrator refuses or neglects to file his allowance or rejection for 10 days after the claim has been filed, or if, where a claim has been presented before filing, the executor or administrator refuses or neglects to indorse his allowance or rejection for 10 days after the claim has been presented to him, or if the judge refuses or neglects to indorse his approval or rejection for 10 days after the claim has been presented to him, the refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day. If the claim is presented before filing by a notary, the certificate of the notary, under seal, is prima facie evidence of the presentation and the date thereof.

(b) If a claim is filed with the clerk, or presented to the executor or administrator, before the expiration of the time limited for the filing or presentation of claims, the claim is filed or presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of the time for filing or presenting it.

§ 1634. Status of allowed claims; contest of validity

Every claim allowed by an executor or administrator and approved by the judge shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration; but the validity thereof may be contested by a person in interest, at any time prior to the settlement of the account of the executor or administrator in which it is first reported as an allowed and approved claim, unless established by a judgment against the executor or administrator.

§ 1635. Record of claims allowed

The clerk of the court shall enter in the appropriate book the date of allowance of each claim, together with the amount allowed.

§ 1636. Notice of rejection; action by claimant; time

If a claim is rejected either by the executor or administrator, or the judge, written notice of the rejection shall be given by the executor or administrator to the holder of the claim or to the person filing or presenting it, and the holder may bring suit in the proper court against the executor or administrator within three months after the date of service of the notice if the claim is then due or within two months after it becomes due, otherwise the claim shall be forever barred.

If it appears to the satisfaction of the court that the residence of the claimant is not known, the court shall by its order require the notice to be served on the claimant by filing with the clerk.

The time during which there is a vacancy in the administration is not included in the limitations prescribed in this section for bringing action on the rejected claim.

§ 1637. Filing or presenting claim as prerequisite to action; exception

(a) Except as provided by subsection (b) of this section, a holder of a claim against an estate may not maintain an action thereon, unless the claim is first filed with the clerk, or presented to the executor or administrator.

(b) An action may be brought by the holder of a mortgage or lien to enforce it against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint, but counsel fees may not be recovered in the action unless the claim was first filed with the clerk, or presented to the executor or administrator.

§ 1638. Partial allowance

The executor or administrator may allow a claim in part, in which case he shall state in his allowance the amount he is willing to allow. If the creditor refuses to accept the amount allowed in satisfaction of his claim, he may not recover costs in an action therefor brought against the executor or administrator, unless he recovers a greater amount than that allowed.

§ 1639. Reference; hearing and report; powers of master and court; effect

If the executor or administrator doubts the correctness of a claim presented to him or filed with the clerk, he may enter into an agreement in writing with the claimant to refer the matter in controversy to a disinterested person, to be approved by the court. Upon filing the agreement and approval of the court with the clerk, the clerk shall enter an order referring the matter in controversy to the person so selected, or, if the parties consent, a reference to a master may be had in the court. The master shall hear and determine the matter, and make his report thereon to the court. The same proceedings shall be had in all respects, and the master shall have the same powers, be entitled to the same compensation and subject to the same control, as in other cases of reference. The court may remove the master, appoint another in his place, set aside or confirm his report and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon is as valid and effectual, in all respects, as if it had been rendered in a suit commenced by ordinary process; but the report of the master, if confirmed, merely establishes or rejects the claim, as if it had been allowed or rejected by the executor or administrator and judge.

§ 1640. Liability of executor or administrator for costs

When a judgment is recovered, with costs, against an executor or administrator, he shall be individually liable for the costs, but they shall be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Subchapter II—Rules Governing Payment of Claims

§ 1661. Effect of judgment against executor or administrator

A judgment rendered against an executor or administrator, upon a claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge; and the judgment shall be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment shall be filed among the papers of

the estate in court. An execution may not issue upon the judgment, and the judgment does not create a lien upon the property of the estate, or give to the judgment creditor a priority of payment.

§ 1662. Judgment against decedent; execution; filing as claim; levy before death; redemption

When a judgment has been rendered for or against the testator or intestate in his lifetime, an execution may not issue thereon after his death, except as provided by section 546 of Title 5. A judgment against the decedent for the recovery of money shall be filed with the clerk, or presented to the executor or administrator, in the same manner as other claims. If execution is actually levied upon any property of the decedent before his death, the property may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from a sale under foreclosure, or execution, in like manner and with like effect as if the judgment debtor were still living.

§ 1663. Interest

A rate of interest greater than that allowed on judgments obtained in the district court may not be allowed upon a claim after its allowance by the executor or administrator and approval by the judge; and if the estate is insolvent, a greater rate of interest may not be paid upon a debt, from the time of the first publication of notice to creditors, than is allowed by law upon judgments. If a debt of the decedent bears interest, whether or not filed or presented, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether or not the claim is then due; and interest shall thereupon cease to accrue upon the amount so paid.

§ 1664. Writing as prerequisite to personal liability of executor or administrator

An executor or administrator is not chargeable upon a special promise to answer in damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or a memorandum or note thereof, is in writing and signed by the executor or administrator, or by another person specially authorized by him in writing.

§ 1665. Claimant not found; deposit with Government; receipt as voucher; final disposition if amount not claimed

(a) When an estate is in all other respects ready to be closed, and it is made to appear to the satisfaction of the court, by affidavit or by evidence taken in open court, that an allowed and approved claim has not been and can not be paid because the claimant can not be found, the court shall make an order fixing the amount of the claim, with interest, if any, and directing the executor or administrator to deposit the amount with the Canal Zone Government. The officer of the Canal Zone Government who receives the deposit shall give a receipt for it and shall be liable upon his official bond therefor. The executor or administrator shall at once make the deposit in accordance with the order of court and shall forthwith proceed to close up and settle the estate. Upon the final settlement of his accounts, the receipt of the officer of the Canal Zone Government shall be deemed and received as a proper voucher for the payment of the claim, and shall have the same force and effect as if executed by the claimant.

(b) A person claiming to be entitled to any amount deposited under this section may, within five years after the deposit, petition the court

for an order directing payment to the claimant. A copy of the petition shall be served on the Canal Zone Government and thereafter the amount may not be covered into the Treasury of the United States, as directed by subsection (c) of this section, until so ordered by the court.

(c) If no one claims the amount, or if a claim is made and disallowed and the court so directs, the amount deposited devolves to the United States and shall be covered into the Treasury as miscellaneous receipts.

CHAPTER 71—RESORT TO ASSETS; SALES

Sec.

§ 1701. Order of resort to estate for debts

The property of a testator, except as otherwise specially provided in this title, shall be resorted to for the payment of debts, in the following order:

(1) property which is expressly appropriated by the will for the payment of the debts;

(2) property not disposed of by the will;

(3) property which is devised or bequeathed to a residuary legatee;

(4) property which is not specifically devised or bequeathed; and

(5) all other property ratably.

§ 1702. Order of sales for payment of debts

In making orders and sales for the payment of debts or family allowance, those articles that are not necessary for the support and subsistence of the family of the decedent, or are not specially bequeathed, shall be first sold.

§ 1703. Order of resort to estate for legacies

The property of a testator, except as otherwise specially provided in this title, shall be resorted to for the payment of legacies, in the following order:

(1) the property which is expressly appropriated by the will for the payment of the legacies;

(2) property not disposed of by the will;

(3) property which is devised or bequeathed to a residuary legatee; and

(4) property which is specifically devised or bequeathed.

§ 1704. Legacies, how charged with debts

Legacies to spouse or kindred of any class are chargeable only after legacies to persons not related to the testator.

§ 1705. Order of abatement of legacies

Unless a different intention is expressed in the will, abatement takes place in any class only as between legacies of that class.

§ 1706. Sale of property to pay debts, legacies, family allowance, or expenses; selection

(a) In selling property to pay debts, legacies, family allowance or expenses, there is no priority as between personal and real property. When a sale of property of the estate is necessary for any such purpose, or when it is for the advantage, benefit, and best interests of the estate and those interested therein that property of the estate be sold, the executor or administrator may sell the property, using his discretion as to which property to sell first, except as provided by sections 1701–1703 of this title.

(b) The executor or administrator in making a sale pursuant to subsection (a) of this section may sell the entire interest of the estate in the property or any lesser interest or estate therein.

§ 1707. Confirmation of sales

All sales of property shall be reported under oath to and be confirmed by the court, before the title to the property passes.

§ 1708. Sale of perishable and depreciating property, and of personal property necessary to pay family allowance

At any time after receiving letters, the executor, administrator, or special administrator may sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and as much other personal property as may be necessary to provide the allowance made to the family of the decedent pending the receipt of other sufficient funds, and title shall pass without confirmation; but the executor, administrator, or special administrator is responsible for the property unless, after making a sworn return, and on a proper showing, the court approves the sale.

§ 1709. Sale of personal property at public auction or private sale; notice

The sale of personal property may be made at public auction or private sale, for cash, and, except in the case of perishable property, after public notice given for at least 10 days by notices posted in three public places in the Canal Zone, or by publication in a newspaper of general circulation in the Canal Zone, or both, as the executor or administrator determines, containing the time and place of sale, and a brief description of the property to be sold. Public sales shall be made at the courthouse door, or at another public place, or at the residence of the decedent; but a sale may not be made of any personal property which is not present at the time of the sale, unless the court otherwise orders.

§ 1710. Partnership and pledged property interests; choses in action; duty of court

Partnership interests or interests belonging to an estate by virtue of a partnership formerly existing, interest in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the court shall inquire into the condition of the partnership affairs, and shall examine the surviving partner, if in the Canal Zone and able to be present in court.

CHAPTER 73—NOTES, MORTGAGES, CONVEYANCES AND TRANSFERS

SUBCHAPTER I—BORROWING MONEY AND MORTGAGING PERSONAL PROPERTY

SUBCHAPTER II—CONVEYANCES AND TRANSFERS TO COMPLETE CONTRACTS

Subchapter I—Borrowing Money and Mortgaging Personal Property

§ 1741. Authorization to borrow money or mortgage personal property

When it appears to be to the advantage of an estate under administration to borrow money upon a note or notes, either unsecured, or to be secured by a chattel mortgage or other lien upon the personal property of the decedent, or any part thereof, in order to pay the debts of the decedent, legacies, or expenses or charges of administration, or to pay, reduce, extend or renew a mortgage or lien already subsisting upon such personal property of the estate or a part thereof, and as often as occasion therefor arises in the administration of the estate, the court may, by order, authorize and direct the executor or administrator to borrow the money and to execute the note or notes, and, in the proper case, to execute the chattel mortgage or to give other security by way of pledge or other lien on the personal property. To obtain an order under this section, the proceedings to be taken and the effect thereof are as provided in this subchapter.

§ 1742. Petition; setting for hearing; notice

A verified petition for an order pursuant to section 1741 of this title may be filed with the clerk of the court by the executor or administrator, or a person interested in the estate, showing:

(1) the particular purpose for which the order is sought;

(2) the necessity for, or the advantage to accrue from, the order;

(3) the amount of money proposed to be raised;

(4) the rate of interest, if any, to be paid;

(5) the length of time the note or notes are to run; and

(6) a general description of the property proposed to be mortgaged or subjected to other lien.

The clerk shall set the petition for hearing by the court and give notice thereof, including the posting of the notice, for the period and in the manner provided by section 1583 of this title.

§ 1743. Hearing; witnesses; order

(a) At the time appointed by section 1742 of this title, the court, upon proof that notice of the hearing has been given, shall proceed to hear the petition and any objections thereto that may have been filed or presented. The court may compel the attendance of, and

the giving of testimony by, witnesses, in the same manner, and with like effect, as in other cases.

(b) If, after a hearing, the court is satisfied that it will be to the advantage of the estate, it shall make an order authorizing and directing the executor or administrator to borrow the money and to execute the note or notes, and, in a proper case, to execute the chattel mortgage, or to give other security by way of pledge or other lien, on personal property of the estate. The court, in its order, may:

(1) direct that a lesser amount than that named in the petition be borrowed;

(2) prescribe the maximum rate of interest and period of the loan;

(3) require that the interest and the whole or any part of the principal be paid, from time to time, out of the whole estate or any part thereof.

§ 1744. Execution of notes and instruments of security

(a) If the order issued pursuant to section 1743 of this title directs the execution of a chattel mortgage, pledge, or other lien, the executor or administrator shall execute and deliver a promissory note or notes for the amount and period specified in the order, and at not more than the maximum rate of interest specified in the order, and shall execute the mortgage, pledge, or other lien, setting forth therein that it is made by authority of the order, and giving the date of the order.

(b) If the order issued pursuant to section 1743 of this title directs the negotiating of an unsecured loan, the executor or administrator shall execute and deliver a promissory note or notes, without security, for the amount and period specified in the order, and at not more than the maximum rate of interest specified in the order.

(c) Instruments executed and delivered under this section shall be signed by the executor or administrator, as such, and shall create no personal liability against the person so signing.

§ 1745. Effectiveness of obligations created under this subchapter

(a) A chattel mortgage, pledge, or other lien made and delivered under this subchapter is effectual to mortgage, pledge, or subject to lien all the right, title, and interest which the decedent had in the property described therein at the time of his death or prior thereto, and any right, title, or interest in the property acquired by the estate of the decedent by operation of law or otherwise, after his death.

(b) Notes signed and delivered in the negotiation of an unsecured loan under this subchapter are effectual to create a valid obligation and debt against the estate of the decedent, and are payable out of the funds of the estate.

§ 1746. Effect of irregularities

(a) An irregularity in proceedings under this subchapter with respect to the borrowing of money upon a note or notes secured by a chattel mortgage, pledge, or other lien, does not impair or invalidate the proceedings or the notes and mortgage, pledge, or other lien given in the pursuance thereof, and, except as provided by subsection (b) of this section, the mortgagee, his heirs and assigns, possess the same right and remedies on the note or notes and mortgage, pledge, or other lien as if it had been made by the decedent prior to his death.

(b) Upon a foreclosure, if the proceeds of the encumbered property are insufficient to pay the note or notes, and mortgage, pledge, or other lien, a judgment or claim for any deficiency of the proceeds to satisfy the obligation, or the costs or expenses of sale, may not be had or allowed, except in cases where the note or notes, mortgage, pledge, or other lien were given to pay, reduce, extend, or renew a mortgage or

lien subsisting on the property, or a part thereof, at the time of the death of the decedent, and the indebtedness secured by the mortgage or lien so subsisting was an allowed and approved claim against the estate, in which case the part of the indebtedness remaining unsatisfied shall be classed and paid with other demands against the estate, as provided by sections 1881–1887 of this title, with respect to mortgages and other liens subsisting at the time of death.

Subchapter II—Conveyances and Transfers to Complete Contracts

§ 1771. Authorization to complete contracts for sale or transfer

When a person who is bound by contract in writing to convey any real estate, or to transfer any personal property, dies before making conveyance or transfer, and in all cases when the decedent, if living, might be compelled to make the conveyance or transfer, the court having jurisdiction of the probate proceedings of the estate of the decedent, may make a decree authorizing and directing the executor or administrator of the decedent to convey or transfer the real estate or personal property to the person entitled thereto.

§ 1772. Filing petition; setting time and place of hearing; notice

The executor or administrator, or a person claiming to be entitled to a conveyance or transfer, as referred to in section 1771 of this title, may file with the clerk of the court a verified petition, setting forth the facts upon which the claim is based. Thereupon, the clerk shall set the time and place for hearing of the petition by the court. Notice thereof shall be served on the executor or administrator personally, when he is not the petitioner, and shall be published at least once a week for four successive weeks before the hearing, in a newspaper of general circulation in the Canal Zone.

§ 1773. Hearing; objections; orders; compliance

(a) At the time and place appointed for a hearing under this subchapter, or at such other time to which the hearing may be postponed, upon satisfactory proof by affidavit or otherwise, of the publication of the notice, the court shall proceed to hear the petition, and all persons interested in the estate may appear and contest it, by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

(b) If, after a full hearing upon the petition and objections and examination of the facts and circumstances of the claim, the court is satisfied that the conveyance of the real estate described in the petition to the party entitled thereto should be made, it shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the party entitled thereto.

(c) The executor or administrator shall execute the conveyance or transfer according to the directions contained in the order; and the order is prima facie evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance or transfer.

§ 1774. Rights of petitioner after dismissal

If, upon a hearing under this subchapter, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court shall dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months after the dismissal, proceed by action to enforce a specific performance thereof.

§ 1775. Effect of conveyance or transfer

Every conveyance or transfer made in pursuance of a decree as provided by this subchapter, passes title to the property contracted for, as fully as if the contracting party himself was still living, and executed the conveyance or transfer.

§ 1776. Effect of recording copy of order

A copy of a decree for a conveyance or transfer as provided in this subchapter, certified and recorded in the office of the registrar of property, gives the person entitled to the conveyance or transfer a right to the possession of the property contracted for, and to hold the property according to the terms of the intended conveyance or transfer, in like manner as if the property had been conveyed or transferred in pursuance of the decree.

§ 1777. Enforcement of order by other process

The recording of a decree, as provided by section 1776 of this title, does not prevent the court making the decree from enforcing it by other process.

§ 1778. Death of party entitled to conveyance or transfer

If the person entitled to the conveyance or transfer dies before the commencement of the proceedings therefor under this subchapter, or before the completion of the conveyance or transfer, a person entitled to succeed to his rights in the contract, or the executor or administrator of the decedent, may, for the benefit of the person so entitled, commence the proceedings or prosecute any proceedings already commenced, and the conveyance or transfer shall be so made as to vest the property in the person or persons entitled thereto, or in the executor or administrator, for their benefit.

§ 1779. Surrender of possession

The decree provided for in this subchapter may direct the possession of the property therein described to be surrendered to the person entitle thereto, upon his producing a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

CHAPTER 75—COMPENSATION AND ACCOUNTING

SUBCHAPTER I—COMMISSIONS AND ALLOWANCES

SUBCHAPTER II—ATTORNEYS' FEES

SUBCHAPTER III—RENDERING OF EXHIBITS AND ACCOUNTS

SUBCHAPTER IV—PAYMENT OF DEBTS, EXPENSES, AND CHARGES

Subchapter I—Commissions and Allowances

§ 1811. Allowance of expenses and compensation; renunciation

The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services the compensation provided by this chapter; but when the decedent, by his will, makes other provision for the compensation of the executor, that shall be a full compensation for his services, unless by a written instrument, filed in the court, he renounces all claims for compensation provided for in the will.

§ 1812. Compensation; apportionment

(a) The executor, when no compensation is provided by the will or he renounces all claim thereto, or the administrator, shall receive commissions upon the amount of estate accounted for by him, as follows:

(1) first $1,000, at the rate of 7 percent;
(2) next $9,000, at the rate of 5 percent;
(3) next $40,000, at the rate of 3 percent;
(4) next $100,000, at the rate of 2 percent;
(5) next $350,000, at the rate of 1½ percent; and
(6) all above $500,000, at the rate of 1 percent.

(b) When the property of the estate is distributed in kind, and involves no labor beyond its custody and distribution, the commission shall be computed on all the estate above the value of $50,000 at one-half of the rates fixed in this section.

(c) If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by each.

(d) When the executor or administrator is an attorney, he shall not be allowed to charge against the estate any professional fees, as such, for services rendered by himself.

§ 1813. Additional compensation for extraordinary services

Such further allowances may be made as the court deems just and reasonable for any extraordinary services by the executor or administrator, but the total amount of such extra allowances may not exceed one-half of the amount of commissions allowed by section 1812 of this title.

§ 1814. Invalidity of contracts for higher compensation

A contract between an executor or an administrator and an heir, devisee, or legatee, for a higher compensation than that allowed by this chapter, is void.

§ 1815. Allowance upon commissions

At any time during the administration, and upon such notice to the persons interested in the estate as the court requires, an executor or administrator may apply to the court for an allowance to himself upon his commissions. On the hearing of the application the court shall make an order allowing him such portion of his commissions as the court deems proper. The portion so allowed may be thereupon charged against the estate.

Subchapter II—Attorneys' Fees

§ 1831. Attorneys' fees for ordinary or extraordinary services

(a) Attorneys for executors and administrators shall be allowed out of the estate as fees for conducting the ordinary probate proceedings such sum as the court deems reasonable which may not be in excess of the amounts allowed by subchapter I of this chapter as compensation for executors and administrators for their own services.

(b) Such further allowance may be made as the court deems just and reasonable for extraordinary services such as sales or mortgages of real estate, contested or litigated claims against the estate, litigation in regard to the property of the estate, and such other litigation as may be necessary for the executor or administrator to prosecute or defend.

§ 1832. Allowance to attorney upon fees

At any time during the administration, and upon such notice to the executor or administrator and to the persons interested in the estate as the court requires, an attorney who has rendered services to an executor or administrator may apply to the court for an allowance to himself upon his compensation. On the hearing of the application the court shall make an order requiring the executor or administrator to pay the attorney out of the estate such compensation on account of services rendered by the attorney up to the date of the order as the court deems proper, and the payment shall be made forthwith.

Subchapter III—Rendering of Exhibits and Accounts

§ 1851. Charges and credits of executor or administrator

(a) Except as provided by this section, an executor or administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession at the value of the appraisement contained in the inventory, and with all the interest, profit, and income of the estate.

(b) An executor or administrator is not accountable for a debt due to the decedent which remains uncollected without his fault.

(c) An executor or administrator is not liable for the act or negligence of a coexecutor or coadministrator, except for collusion or gross negligence.

(d) An executor or administrator may not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. He shall account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

§ 1852. Accounting required by court; enforcement

(a) When required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator shall render and file with the clerk a verified account showing:

(1) the amount of money received and expended by him;

(2) the claims filed or presented against the estate, giving the name of each claimant, the nature of the claim, when it became due or will become due, and whether it was allowed or rejected by him, or not yet acted upon; and

(3) all other matters necessary to show the condition of the estate.

(b) If an executor or administrator neglects or refuses to appear and render an account, after having been duly cited, an attachment may be issued against him and the accounting compelled, or his letters may be revoked, in the discretion of the court.

§ 1853. Accounting after period for presenting claims; final account; enforcement

(a) Within 30 days after the time to file or present claims against the estate has expired, the executor or administrator shall render a full and verified account and report of his administration, which shall include all the matters referred to in section 1852 of this title.

(b) The executor or administrator shall render a final account, and pray settlement of his administration, when there are sufficient funds in his hands for the payment of all debts and the estate is in a proper condition to be closed.

(c) If an executor or administrator fails to present his account, the court shall compel the accounting by attachment. Any person interested in the estate may apply for and obtain an attachment. An attachment may not issue unless a citation has first been issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

§ 1854. Accounting after authority revoked or ceases

When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the court, at the instance of the person succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate while he was executor or administrator.

§ 1855. Revocation of letters

If the executor or administrator resides out of the Canal Zone, or absconds, or conceals himself, so that the citation can not be personally served, and neglects to render an account within the time prescribed by this subchapter, or if he neglects to render an account within 30 days after being committed where an attachment has been executed, his letter shall be revoked.

§ 1856. Vouchers; production; withdrawal

In rendering his account, the executor or administrator shall produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which shall remain in the court. When a voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason can not be produced on the settlement, the payment may be proved by the oath of a competent witness.

§ 1857. Setting day for settlement of account; notice; final settlement

(a) When an account is rendered for settlement, the clerk of the court shall appoint a day for the settlement thereof, and thereupon cause notices to be posted in at least three public places in the Canal Zone, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account. If, upon the final hearing at the time of settlement, the court deems the notice insufficient from any cause, it may order such further notice to be given as it deems proper.

(b) If the account referred to in subsection (a) of this section is for a final settlement and a petition for the final distribution of the estate is filed with the account, the notice of settlement shall state those facts, which notice shall be given by posting or publication for at least 10 days prior to the day of settlement. On the settlement of the account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings.

§ 1858. Exceptions to account; hearing; referees

(a) On the day appointed, or any subsequent day to which the hearing may be postponed by the court, a person interested in the estate may appear and file written exceptions to the account, and contest it.

(b) Upon the hearing, the executor or administrator may be examined on oath touching the account and the property and effects of the decedent, and the disposition thereof.

(c) All matters, including allowed claims not passed upon on the settlement of any former account, or on making a decree of sale, may be contested for cause shown.

(d) The hearing and allegations of the respective parties may be postponed from time to time, when necessary.

(e) The court may appoint one or more masters to examine the accounts, and make report thereon, subject to confirmation; and may allow a reasonable compensation to the masters to be paid out of the estate of the decedent.

§ 1859. Jury trial of contested claims

When an allowed claim is contested by any person entitled to contest it, either the contestant or the claimant is entitled to a trial by jury of the issues of fact presented by the contest. At the request of either party, the court shall call a jury and submit the issues to them. After receiving the verdict, the court shall enter an order disposing of the contest in accordance therewith.

§ 1860. Debts paid without verified claims

If it appears that debts of the decedent have been paid without verified claims having been filed or presented and allowed and approved, and it is proved by competent evidence to the satisfaction of the court that the debts were justly due, were paid in good faith, that the amount paid was the true amount of the indebtedness over and above all payments or setoffs, and that the estate is solvent, the court shall allow the sums so paid in settling the account.

§ 1861. Failure to produce vouchers; lost vouchers; expenditures less than $20

(a) If it appears by the oath to the account, and is proven by competent evidence to the satisfaction of the court, that a voucher for a disbursement has been lost or destroyed; that it is impossible to obtain a duplicate thereof; that the item was paid in good faith and for the best interests of the estate; and that the item was a legal charge against the estate, the executor or administrator shall be allowed the item.

(b) On the settlement of his account, an executor or administrator may be allowed any item of expenditure not exceeding $20, for which a voucher is not produced, if the item is supported by his uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole may not exceed $500 against any one estate.

§ 1862. Settlement of account as conclusive

The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons interested in the estate, saving, however, to all persons laboring under legal disability, the right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in an action brought by any such person, the allowance and settlement of the account is prima facie evidence of its correctness.

§ 1863. Proof of notice of settlement of account

The account may not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree shall show that the proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

§ 1864. Accounts of deceased executor or administrator

If an executor or administrator dies, his accounts may be presented by his personal representative to, and settled by, the court in which the estate of which he was executor or administrator was being administered. Upon petition of the successor of the deceased executor or administrator, the court may compel the personal representative of the deceased executor or administrator to render an account of the administration of his testator or intestate, and the court shall settle the account as in other cases.

Subchapter IV—Payment of Debts, Expenses, and Charges

§ 1881. Order of payment of debts, expenses, and charges

(a) The debts of the decedent, the expenses of administration, and the charges against the estate shall be paid in the following order:

(1) expenses of administration;

(2) funeral expenses;

(3) expenses of the last sickness;

(4) family allowance;

(5) debts due to the United States;

(6) mortgages and other liens, in the order of their priority, as far as they may be paid out of the proceeds of the encumbered property;

(7) judgments rendered against the decedent in his lifetime, in the order of their date;

(8) all other demands against the estate.

(b) The preference given in subsection (a) of this section to a mortgage or lien extends only to the proceeds of the property subject to the mortgage or lien. If the proceeds of the property are insufficient to pay the mortgage or lien, the part remaining unsatisfied shall be classed with general demands against the estate.

§ 1882. Time for payment generally

As soon as he has sufficient funds in his hands, the executor or administrator shall pay the funeral expenses, the expenses of the last sickness, and the family allowance. He may retain in his hands the necessary expenses of administration. He is not obliged to pay any other debt or any legacy until, as prescribed by this subchapter, the payment has been ordered by the court.

§ 1883. Order for payment of debts; dividends; discharge if estate exhausted

(a) Upon the settlement of an account of the executor or administrator rendered pursuant to section 1853(a) of this title after the time to file or present claims has expired, the court shall order the payment of the debts, as the circumstances of the estate permit.

(b) If there are not sufficient funds in the hands of the executor or administrator to pay all the debts, the court shall specify in the decree the sum to be paid to each creditor. A creditor of one class may not receive any payment until all those of the preceding class are fully paid. If the estate is insufficient to pay all the debts of a class, each creditor of that class shall be paid a dividend in proportion to his claim.

(c) If the property of the estate is exhausted by the payment ordered, the account shall be considered as a final account, and the

executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs showing that the payments have been made, and that he has fully complied with the decree.

§ 1884. Future, contingent, or disputed claims

Where there is a claim not due, or a contingent or disputed claim against the estate, the amount thereof, or such part as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If a creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section may not be made when the estate is insolvent, unless a pro rata distribution is ordered.

§ 1885. Personal liability after decree for payment; execution

When a decree is made for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on the decree, as upon a judgment, in favor of each creditor, and the same proceeding may be had under the execution as under execution in other cases. The executor or administrator is liable therefor on his bond to each creditor.

§ 1886. Claims omitted from account

When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, a creditor whose claim was not included in the order for payment may not call upon the creditors who have been paid, or upon the heirs, devisees, or legatees to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors prescribed by law, the creditor may recover on the bond of the executor or administrator the amount for which his claim would properly have been allowed. This section does not apply to a creditor whose claim was not due 10 months before the day of settlement, or whose claim was contingent and did not become absolute 10 months before that day.

§ 1887. Closing or continuing administration after first distribution

If all the debts have been paid by the first distribution, the court shall direct the payment of legacies and the distribution of the estate among the persons entitled, as provided by chapter 77 of this title; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the court shall give such extension of time as may be reasonable for a final settlement of the estate.

CHAPTER 77—DISTRIBUTION AND DISCHARGE

SUBCHAPTER I—PRELIMINARY DISTRIBUTION

SUBCHAPTER II—FINAL DISTRIBUTION

SUBCHAPTER III—ADVANCEMENTS AND ADEMPTIONS

SUBCHAPTER IV—DISCHARGE

Subchapter I—Preliminary Distribution

§ 1921. Petition for payment of legacies or shares

(a) At any time after four months from the issuing of letters testamentary or of administration, an heir, devisee, or legatee, or an assignee, grantee, or successor in interest thereof, may petition the court for the legacy or share of the estate to which he is entitled, or any portion thereof, to be given to him upon his giving bond, with security, for the payment of his proportion of the debts of the estate.

(b) Notice of the application shall be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

(c) The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application.

§ 1922. Hearing; order; bond

(a) If it appears at the hearing that the estate is but little indebted, and that the share of the petitioner may be allowed to him without loss to the creditors of the estate, the court shall make an order requiring the executor or administrator to deliver to the petitioner the whole portion of the estate to which he may be entitled, or only such part thereof as the court may designate, upon receiving a bond executed by the petitioner, in a sum fixed by the court and with sureties approved by the court, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled. If the time for filing or presenting claims has expired, and all claims that have been allowed have been paid or are secured by mortgage upon real estate sufficient to pay them, and the court is satisfied that no injury can result to the estate, the court may dispense with the bond.

(b) In the execution of the order, if a partition is necessary between two or more of the parties interested, it shall be made in the manner prescribed by chapter 81 of this title.

(c) The costs of the proceedings shall be paid by the petitioner, or if there are more than one, shall be apportioned equally among them.

§ 1923. Order for payment of bond; action on bond

When a bond has been executed and delivered pursuant to section 1922 of this title, and the settlement of the estate requires the payment of part of the money thereby secured, the executor or administrator shall petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, if satisfied of the necessity of the payment,

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the court shall make an order accordingly, designating the amount and giving a time within which it shall be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

§ 1924. Ratable distribution

(a) When the time for filing or presenting claims has expired, and all claims that have been allowed have been paid, or are secured by a mortgage upon real estate sufficient to pay them, and the estate is not in a condition to be finally closed and distributed, the executor or administrator may petition the court for ratable payment of the legacies, or ratable distribution of the estate to all the heirs, legatees, devisees, or their assignees, grantees, or successors in interest.

(b) Notice of the application shall be given to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

(c) Any person interested in the estate may appear at the time named and resist the application.

(d) If it appears at the hearing that the allegations of the petition are true, and the court is satisfied that no injury can result to the estate by granting the petition, the court shall make an order directing the executor or administrator to deliver to the heirs, legatees, devisees, or to their assigns, grantees, or successors in interest, the whole portion of the estate to which they may be entitled or such portion of the estate as the court may designate.

(e) In the execution of the order, if a partition is necessary between two or more of the parties interested, it shall be made in the manner prescribed by chapter 81 of this title.

(f) The costs of the proceedings under this section shall be paid by the estate, except that if a partition is necessary, the costs of the partition shall be apportioned among the parties interested in the partition.

Subchapter II—Final Distribution

§ 1951. Final distribution generally

Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, devisee (or his assignee, grantee, or successor in interest), the court shall proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto.

§ 1952. Petition; notice of hearing; contest; partition

(a) The order or decree pursuant to section 1951 of this title may be made on the petition of the executor or administrator, or of any person interested in the estate.

(b) When the petition is filed the clerk of the court shall set the petition for hearing by the court, and cause a notice to be posted at the courthouse where the court is held, setting forth the name of the estate, the executor or administrator, and the time appointed for the hearing of the petition. If, upon the hearing of the petition, the court deems the notice insufficient from any cause, it may order such further notice to be given as it deems proper.

(c) At the time fixed for the hearing, or to which the hearing may be postponed, any person interested in the estate may appear and contest the petition by filing written objections thereto.

(d) If partition is applied for, the decree of distribution does not divest the court of jurisdiction to order partition, unless the estate is finally closed.

§ 1953. Decree of distribution; finality

In the order or decree of distribution, the court shall name the persons and the proportions or parts to which each shall be entitled, and they may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. The order or decree is conclusive as to the rights of heirs, legatees, or devisees.

§ 1954. Supplementary account of executor or administrator

A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final account, shall be reported and filed at the time of making the distribution. A settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the court and include in the order or decree, or the court may order notice of the settlement of the supplementary account, and refer the same as in other causes of the settlement of accounts.

§ 1955. Death of unmarried minor heir, devisee, or legatee

If an heir, devisee, or legatee who is issue of the decedent dies intestate while under age and not having been married, before the close of the administration, administration on the estate of the deceased heir, devisee, or legatee is not necessary, but his share of his ancestor's estate shall be distributed directly to heirs at law.

§ 1956. Death of heir, devisee, or legatee before distribution

If an heir, legatee, or devisee of an estate dies before the distribution to him of any part of the estate, the property to which he might be entitled, if living, becomes a part of his estate and it may be distributed to the representative of his estate for the purpose of administration therein, with the same effect as if distributed to him while living.

§ 1957. Testamentary limitation of time for administration

When a testator, by his will, has limited the time for administration upon his estate, the limitation is directory only, and does not limit the power of the executor or of the court to continue the administration beyond the time limited where this is necessary or convenient.

§ 1958. Estates of nonresidents; delivery of property to State of residence

(a) Upon application for distribution after final settlement of the accounts of administration, if the decedent was a nonresident of the Canal Zone, leaving a will which has been duly proved or allowed in the State of his residence, and an authenticated copy thereof has been admitted to probate in the Canal Zone, or if he died intestate, and an administrator has been duly appointed and qualified in the State of his residence, and it is necessary in order that the estate, or any part thereof, may be distributed according to the will, or if the court is satisfied that it is for the best interests of the estate, that the estate in the Canal Zone should be delivered to the executor or administrator in the State of the decedent's residence, the court may order the delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. Sales of real estate, ordered by virtue of this section, shall be made in the same manner as other sales of real estate of decedents by order of the court.

(b) The delivery, in accordance with the order of the court under this section, is a full discharge of the executor or administrator with the will annexed or administrator in the Canal Zone in relation to all property embraced in the order, which binds and concludes all parties in interest.

Subchapter III—Advancements and Ademptions

§ 1981. Gifts before death

A gift before death shall be considered as an ademption of a bequest or devise of the property given; but a gift before death may not be taken as an advancement to an heir or as an ademption of a general legacy unless such intention is expressed by the donor in the grant or otherwise in writing, or unless the donee acknowledges it in writing to be such.

§ 1982. Advancement as part of estate; deduction from share

(a) Property given by the decedent in his lifetime as an advancement to an heir is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and shall be taken by the heir toward his share of the estate of the decedent.

(b) If the amount of the advancement exceeds the share of the heir receiving it, he shall be excluded from further portion in the division and distribution of the estate, but he may not be required to refund any part of the advancement. If the amount so received is less than his share, he is entitled to as much more as will give him his full share of the estate of the decedent.

§ 1983. Value of advancement

If the value of the property advanced is expressed in the grant, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it shall be held as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

§ 1984. Death of heir before decedent

If an heir receiving an advancement dies before the decedent, leaving heirs, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

§ 1985. Determination of questions as to advancements

All questions as to advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the court, and shall be specified in the decree assigning and distributing the estate. The final judgment or decree of the court is binding on all parties interested in the estate.

Subchapter IV—Discharge

§ 2001. Distributee who can not be found, refuses to accept, or is minor or incompetent

(a) When property consisting wholly or partly of money is distributed by a judgment or decree of the court as provided in this chapter to a person who:

(1) can not be found and whose place of residence is unknown;

(2) refuses to accept the property or to give a proper voucher therefor; or

(3) is a minor or incompetent person and has no legal guardian to receive the property or person authorized to receipt therefor—

the executor or administrator shall deposit the money, in the name of the distributee, with the Canal Zone Government. The officer of the Canal Zone Government who receives the deposit shall give a receipt for it and shall be liable on his official bond therefor. The receipt

shall be deemed and received by the court as a voucher in favor of the executor or administrator, with the same force and effect as if executed by the assignee or distributee.

(b) A person claiming to be entitled to an amount deposited under this section may, within five years after the deposit, petition the court for an order directing payment to him. A copy of the petition shall be served on the Canal Zone Government and thereafter the amount may not be covered into the Treasury of the United States, as directed by subsection (c) of this section until so ordered by the court.

(c) If no one claims the amount, or if a claim is made and disallowed and the court so directs, the amount deposited devolves to the United States and shall be covered into the Treasury as miscellaneous receipts.

§ 2002. Agent for nonresident distributee

(a) When property is assigned or distributed, by a judgment or decree of the court as provided in this chapter, to a person residing out of and having no agent in the Canal Zone, and it is necessary that a person should be authorized to take charge of the property for the benefit of the absent person, the court may appoint an agent for that purpose and authorize him to take charge of the property, as well as to act for the absent person in the distribution.

(b) The agent shall execute a bond to the Government of the Canal Zone, to be approved by the court, conditioned that he shall faithfully manage and account for the property. The court may allow him a reasonable sum out of the profits of the property for his services and expenses.

(c) When personal property remains in the hands of the agent unclaimed for a year and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds after deducting the expenses of the sale, allowed by the court, shall be paid to the Canal Zone Government. When the payment is made, the agent shall take from the officer to whom it is made a receipt, which he shall file in the court. Where an agent has money in his hands as such agent, and it appears to the court upon the settlement of his account as agent that the balance remaining in his hands should be paid to the Canal Zone Government, the court may direct the payment and upon the agent's filing the proper receipt showing the payment the court shall enter an order discharging the agent and his sureties from all liability therefor. All such funds shall be held and disposed of by the Canal Zone Government in the manner provided by section 2001 of this title.

(d) The agent shall render to the court an annual account, showing:

(1) the value and character of the property received by him, what portion thereof is still on hand, what sold, and for what;

(2) the income derived therefrom; and

(3) expenses incurred in the care, protection, and management thereof, and whether paid or unpaid.

(e) When filed the court may examine witnesses and take proofs in regard to the account; and if satisfied that it will be for the benefit and advantage of the persons interested therein the court may order sale to be made of the whole or such parts of the real or personal property as appears to be proper, and the proceeds to be deposited with the Canal Zone Government.

(f) The agent is liable on his bond for the preservation of the property while in his hands, and for the payment of the proceeds of the sale as required in this section, and may be sued thereon by any person interested.

(g) When a person appears and claims the money paid to the Canal Zone Government, the court making the distribution shall in-

quire into the claim, and, being first satisfied of his right thereto, shall grant him a certificate to that effect, under its seal. Upon the presentation of the certificate, the Canal Zone Government shall pay the amount thereof to the claimant.

§ 2003. Specific legacy for life only; inventory

Where a specific legacy is for life only, the first legatee shall sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that it is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

§ 2004. Final settlement, decree, and discharge

When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court shall make a judgment or decree discharging him from all liability to be incurred thereafter.

§ 2005. Letters after final settlement; after discovered property

The final settlement of an estate, as provided in this chapter, does not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed, if other property of the estate is discovered, or if it becomes necessary or proper for any cause that letters should be again issued.

CHAPTER 79—DETERMINATION OF HEIRSHIP

SUBCHAPTER I—DETERMINATION OF HEIRSHIP IN ADMINISTRATION OF ESTATE

SUBCHAPTER II—SEPARATE PROCEEDING TO DETERMINE HEIRSHIP

Subchapter I—Determination of Heirship in Administration of Estate

§ 2041. Petition to determine heirship; notice

(a) At any time prior to the decree of final distribution, the executor or administrator, or any person claiming to be heir to the deceased, or entitled to distribution in whole or in part of the estate, may file a petition, praying the court to ascertain and declare the rights of all persons to the estate and all interests therein, and to whom distribution thereof should be made.

(b) Upon the filing of the petition, the court shall make an order directing service of notice to all persons interested in the estate to appear and show cause, on a day to be therein named, not less than 60 days nor more than 4 months from the date of the order. The notice shall set forth the name of the deceased, the name of the executor or administrator, the names of all persons who may have appeared claiming an interest in the estate in the course of the administration up to the time of the making of the order, and

such other persons as the court directs, and also a description of the real estate whereof the deceased died seised or possessed, so far as known, described with certainty to a common intent. The notice shall require all these persons, and all persons named or not named having or claiming an interest in the estate of the deceased, at the time and place specified in the order, to appear and exhibit to the court their respective claims of heirship, ownership, or interest in the estate.

(c) The notice shall be served in the same manner as a summons in a civil action. Upon proof of service, by affidavit or otherwise, to the satisfaction of the court, the court thereupon acquires jurisdiction to ascertain and determine the heirship, ownership, and interest of all parties in and to the property of the deceased, and the determination is final and conclusive in the administration of the estate, and the title and ownership of the property. The court shall enter an order or decree establishing proof of the service of the notice.

§ 2042. Filing of appearance; default

Persons appearing within the time limited in the order provided by section 2041 of this title shall file their written appearance in person or through their authorized attorney, the attorney filing at the same time written evidence of his authority to appear. Entry of the appearance shall be made in the records of the court. After the expiration of the time limited for appearing, the court shall enter an order adjudging the default of persons who have not appeared.

§ 2043. Pleadings; trial

(a) Within 20 days after the date of the order or decree of the court establishing proof of service of the notice referred to in section 2041 of this title, a person so appearing may file his complaint, setting forth the facts constituting his claim to heirship, ownership, or interest in the estate, with such reasonable particularity as the court may require. He shall serve a copy of the complaint upon each of the parties or their attorneys who have entered their written appearance, if they reside within the Canal Zone; and, if any of them does not reside within the Canal Zone, service of copies of the complaint shall be made upon the clerk of court for them, and the clerk shall forthwith mail the copies to the address of each such party or attorney who has left with the clerk his address.

(b) Within 20 days after the service of the complaint, the parties may plead thereto, and thereafter the same proceedings shall be had upon the complaint as in an ordinary civil action; and the issues of law and of fact arising in the proceedings shall be disposed of in like manner as issues of law and fact in civil actions; and the provisions regulating the mode of procedure for the trial of civil actions are applicable thereto.

(c) The party filing the petition, if he files a complaint, and, if not, the party first filing a complaint shall, in all subsequent proceedings, be treated as the plaintiff therein, and all other parties so appearing shall be treated as the defendants, and all the defendants shall set forth in their respective answers the facts constituting their claim of heirship, ownership, or interest in the estate, with such particularity as the court may require, and serve a copy thereof on the plaintiff.

(d) Evidence in support of all issues may be taken orally or by deposition, in the same manner as in civil actions. Notice of the taking of depositions shall be served only upon the parties, or the attorneys of the parties, who have appeared in the proceeding.

§ 2044. Decree determining rights; conclusiveness; costs

The court shall enter a default of persons failing to appear, plead, or prosecute or defend their rights as aforesaid. Upon the

trial of the issues arising upon the pleadings, the court shall determine the heirship to the deceased, the ownership of his estate, and the interest of each respective claimant thereto or therein, and persons entitled to distribution thereof. The final determination of the court thereupon is final and conclusive in the distribution of the estate, and in regard to the title to all the property of the estate of the deceased.

The cost of the proceedings under this subchapter shall be apportioned in the discretion of the court.

§ 2045. Attorney for minors

In a proceeding under this subchapter, the court may appoint an attorney for a minor not having a guardian.

§ 2046. Determination of heirship at final distribution

This subchapter does not exclude the right upon final distribution of an estate to contest the questions of heirship, title, or interest in the estate so distributed, where they have not been determined under this subchapter; but, where these questions have been litigated under the provisions of this subchapter, the determination thereof as provided in this subchapter is conclusive in the distribution of the estate.

Subchapter II—Separate Proceeding to Determine Heirship

§ 2071. Establishment of identity of heirs

When title to real or personal property, or any interest therein, becomes vested, other than by the laws of succession, in the heirs, heirs of the body, issue, or children of any person, without other description or means of identification of the persons embraced in the description, any person interested in the property as an heir, heir of the body, issue, or child, or the successor in interest of an heir, heir of the body, issue, or child, or the legal representatives of any of such persons or of their successors in interest, may file a verified petition in the district court in and for the division where the property or any part thereof is situated, setting forth briefly:

(1) the deraignment of title of petitioner;

(2) a description of the property affected;

(3) the names, ages, and residences, if known, of the heirs, heirs of the body, issue, or children whose identity is sought to be determined, and if any of them is dead or his residence is unknown, stating these facts; and

(4) a request that a decree be entered determining and establishing the identity of the persons embraced in that general description.

§ 2072. Notice of hearing

Notice of the time and place for the hearing of the petition shall be given by the clerk by posting notices thereof in three or more public places in the Canal Zone at least 10 days prior to the date fixed by the clerk for the hearing.

§ 2073. Answer; hearing; decree

(a) At any time before the date fixed for the hearing, any person interested in the property may answer the petition and deny any of the matters contained therein.

(b) At the time fixed for the hearing or any time thereafter fixed by the court, the court shall hear the proofs offered by the petitioner, and by any person answering the petition and shall make a decree conformable to the proofs. The decree shall have the same force and effect as decrees entered in accordance with the other provisions of this title.

CHAPTER 81—PARTITION BEFORE DISTRIBUTION

Sec.

§ 2101. Partition of undivided property; commissioners

When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the court, who shall be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, shall be issued to the commissioners as their warrant, and their oath shall be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

§ 2102. Petition; notice

The partition may be ordered and had in the district court on the petition of any person interested. Before commissioners are appointed or partition ordered by the court as directed in this chapter, notice thereof shall be given to all persons interested who reside in the Canal Zone, or to their guardians, and to the agents, attorneys, or guardians, if any in the Canal Zone, of persons who reside out of the Canal Zone, either personally or by public notice, as the court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given at any time before the order or decree of distribution, but the commissioners may not be appointed until the order or decree is made distributing the estate.

§ 2103. Assignment of shares

Partition or distribution of the estate may be made as provided in this chapter, although one or more of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and the shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to the heirs, legatees, or devisees.

§ 2104. Description of shares

When both distribution and partition are made, the several shares in the real and personal estate shall be set out to each individual in proportion to his right, by metes and bounds, or description, so that the shares can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

§ 2105. Indivisible property

When the real estate can not be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole shall pay

to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or in the case of the minority of a party, then to the satisfaction of his guardian; and the true value of the estate shall be ascertained and reported by the commissioners. When the commissioners are of the opinion that the real estate can not be divided without prejudice or inconvenience to the owners, they shall so report to the court and recommend that the whole be assigned as herein provided, and shall find and report the true value of the real estate. On filing the report of the commissioners, and on making or securing the payment provided, the court, if it appears just and proper, shall confirm the report, and thereupon the assignment is complete, and the title to the whole of the real estate vests in the person to whom the same is so assigned.

§ 2106. Payments for equality of partition

When a tract of land or tenement is of greater value than any one's share in the estate to be divided, and can not be divided without injury to it, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed by section 2105 of this title. The party accepting shall pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but the partition may not be established by the court until the sums awarded are paid to the parties entitled to them, or secured to their satisfaction.

§ 2107. Sale of property

When it appears to the court, from the commissioners' report, that it can not otherwise be fairly divided and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale shall be conducted, reported, and confirmed in the same manner and under the same requirements provided by chapter 71 of this title.

§ 2108. Notice of partition; proceedings of commissioners

Before a partition is made or an estate divided, as provided in this chapter, notice shall be given by the commissioners to all persons interested in the partition, or their guardians, agents, or attorneys, of the time and place when and where they will proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

§ 2109. Commissioners' report; decree of partition

The commissioners shall report their proceedings, and the partition agreed upon by them, to the court, in writing. The court may, for sufficient reasons, set aside the report and commit it to the same commissioners, or appoint others. When the report is finally confirmed, a certified copy of the judgment, or decree of partition made thereon, attested by the clerk under the seal of the court, shall be recorded in the office of the registrar of property.

§ 2110. Partition unnecessary unless requested

When the court makes a judgment or decree assigning the residue of an estate to one or more persons entitled to it, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that the partition be made.

CHAPTER 83—PUBLIC ADMINISTRATOR

Sec.

§ 2141. Appointment of public administrator

There shall be in the Canal Zone a public administrator appointed by the Governor.

§ 2142. Estates to be administered

The public administrator shall take charge of the estates of persons dying within the Canal Zone, or who, dying elsewhere, leave estates in the Canal Zone, as follows:

(1) estates of decedents for which no administrators or executors are appointed, and which, in consequence thereof, may be wasted, uncared for, or lost;

(2) estates of decedents who have no known heirs;

(3) estates ordered into his hands by the court;

(4) estates upon which letters of administration or letters testamentary have been issued to him by the court.

§ 2143. Small estates; disposition by public administrator without administration

When the public administrator files with the clerk of the district court a statement that the value of an estate, of which he has taken charge, is less than $1,000, there shall be no regular administration on the estate unless additional estate is found or discovered; and the public administrator may, after the payment of the expenses of the last illness of the deceased, and the funeral charges, pay out and deliver the estate to the surviving spouse of the decedent, if there is a surviving spouse, or, if there is no surviving spouse, then to the minor child or children of the decedent, if any, or, if there is neither a surviving spouse nor minor child, then to such creditors, heirs, or other persons as may appear in the judgment of the public administrator to be legally entitled thereto, and the title to the estate shall vest absolutely in the person or persons to whom it is paid out and delivered as provided in this section.

The provisions of this section apply whether or not there is in existence a will of the decedent.

§ 2144. Burial expenses and expenses of last illness

(a) When the public administrator takes possession of the estate of a deceased person, as provided in section 2142 of this title, and the method of the defrayal of the expense of the burial of the deceased is not otherwise provided for by law or by the rules, agreement, or death benefits of an order or lodge to which the deceased may at the time of his death belong, or with which he may have been affiliated, the public administrator may, in order to defray the proper expenses of the burial of the body of the deceased and the expenses of the last illness, apply to the district court for an order permitting the public administrator summarily to sell any personal property belonging to the deceased, and to withdraw any money that the deceased may have on deposit with any bank, and to collect any indebtedness or claim that may be owing to or due the deceased.

(b) Notice of the application need not be given and no fee shall be charged by the clerk of the court or the public administrator for the filing of the application, or for any duty or service of the clerk or public administrator or his attorney connected therewith.

(c) Upon the sale of the personal property of the deceased, or the collection of any money, claim, or indebtedness by the public administrator under the order, the public administrator shall use the proceeds for the expenses of the burial of the deceased, and the expenses of the last illness.

(d) The public administrator shall file with the clerk of the court a statement showing the property of the deceased that came into his hands and the disposition of the property of the deceased, and shall file with the clerk vouchers showing what disposition was made of the property or of the proceeds thereof.

§ 2145. Estates of persons not United States citizens

If a deceased intestate, whose estate is being administered by the public administrator, was other than a citizen of the United States and left no heirs in the Canal Zone or the Republic of Panama entitled to receive the estate, the proceeds and residue thereof may be delivered to the diplomatic or consular representative, accredited to the Canal Zone or the Republic of Panama, of the country of which the deceased was a citizen or subject, for delivery by the representative to the heirs of the deceased. If the deceased was a citizen of the Republic of Panama, the residue of his estate may be delivered to his heirs in the Republic of Panama or to the authorities of the Republic of Panama lawfully designated to receive it.

§ 2146. Procurement of letters by public administrator; bond and oath

When a public administrator takes charge of an estate, of which he is entitled to take charge without letters of administration being issued, or under order of the court, he shall, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath.

§ 2147. Administration of estates generally; application of other provisions

(a) The public administrator shall make and return a perfect inventory of all estates taken into his possession, and administer and account for them according to the provisions of this title, subject to the control and directions of the court.

(b) The public administrator shall institute all suits and prosecutions necessary to recover the property, debts, papers, and other estate of the decedent.

(c) The court may, at any time, order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

(d) When direction is not given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of this title govern, except that wherever notice is required to be given, the notice may, in the discretion of the court, be waived or be given by posting.

§ 2148. Delivery to regularly appointed executor or administrator

If, at any time, letters testamentary or of administration are regularly granted to another person on an estate of which the public administrator has charge, he shall, under the order of the court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind in his possession or under his control.

§ 2149. Compensation and allowances of public administrator; disposition of fees

(a) Subject to subsection (b) of this section, the public administrator shall receive the same compensation and allowances as are allowed in this title to other administrators.

(b) The commissions to be charged by the public administrator shall be as are allowed in this title to other administrators, except that a commission may not be charged where it appears that the total assets of the estate do not exceed $1,000 in value. The public administrator shall pay over all such fees to, and they shall constitute a revenue of, the Canal Zone Government.

§ 2150. Interest in expenditures

The public administrator may not be interested in expenditures of any kind made on account of an estate he administers; nor may he be associated, in business or otherwise, with anyone who is so interested.

§ 2151. Administration of oaths

The public administrator may administer oaths in regard to all matters touching the discharge of his duties, or the administration of estates in his hands.

§ 2152. Notice of death of stranger

Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of the premises, or anyone knowing the facts, shall give immediate notice thereof to the public administrator; and, in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator, or any party interested.

§ 2153. Notice by civil officers of property of decedent

All civil officers shall inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which, by reason thereof, ought to be in the possession of the public administrator.

CHAPTER 85—NOTICES, ORDERS, AND PROCEDURE

SUBCHAPTER I—NOTICES

SUBCHAPTER II—ORDERS

SUBCHAPTER III—PROCEDURE GENERALLY

Subchapter I—Notices

§ 2181. Requests for special notice of proceedings

(a) At any time after the issuance of letters testamentary or of administration upon the estate of a decedent, a person interested in the estate, whether as heir, devisee, legatee, or creditor, or his attorney, may serve upon the executor or administrator or upon the attorney for the executor or administrator, and file with the clerk of the court wherein administration of the estate is pending, a written request, stating his post-office address and stating that he desires special notice of any or all of the following matters, steps, or proceedings in the administration of the estate:

(1) filing of petitions for sales, leases, or mortgages and confirmation of sales of any property of the estate;

(2) filing of accounts;

(3) filing of petitions for distribution;

(4) filing of petitions for partition of any property of the estate.

(b) Thereafter a brief notice of the filing of any such petitions, or accounts, except petitions for sale of perishable property or other personal property which will incur expense or loss by keeping, shall be addressed to the person making the request, or his attorney, at his stated post-office address, and deposited in the post office with the postage thereon prepaid, within two days after the filing of the petition or account; or personal service of the notice may be made on the person making the request or his attorney, within two days, and the personal service is equivalent to deposit in the post office. Proof of mailing or of personal service shall be filed with the clerk before the hearing of the petition or account.

(c) If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order or judgment, and the judgment shall be final and conclusive upon all persons.

§ 2182. Personal notice by citation; contents

(a) When personal notice is required, and a mode of giving it is not prescribed by this title, it shall be given by citation.

(b) The citation shall be directed to the person to be cited, signed by the clerk, issued under the seal of the court, and shall contain:

(1) the title of the proceeding;

(2) a brief statement of the nature of the proceeding; and

(3) a direction that the person cited appear at a time and place specified.

§ 2183. Issuance and service of citation

(a) The citation may be issued by the clerk upon the application of any party, without an order of the court, except in cases in which an order is expressly required by law.

(b) The citation shall be served in the same manner as a summons in a civil action.

(c) When no other time is specially prescribed by law, the citation shall be served at least five days before the return day thereof.

§ 2184. Service on guardian; powers and duties of guardian

Whenever an infant or incompetent person has a guardian of his estate residing in the Canal Zone, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person, in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. The guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might waive.

§ 2185. Publication; frequency

When a publication is ordered, the publication shall be made daily, or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this title. The court may, however, order a less number of publications during the period.

Subchapter II—Orders

§ 2211. Contents of orders and decrees

Orders and decrees made by the court in probate proceedings need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the court may depend, but shall contain the matters ordered or adjudged, except as otherwise provided in this title.

§ 2212. Entry and filing

All orders and decrees of the court shall be entered at length in the records of the court, or shall be signed by the judge and filed; but decrees of distribution shall always be so entered at length.

Subchapter III—Procedure Generally

§ 2231. Trial of issues; judgments

(a) All issues of fact joined in probate proceedings shall be tried in conformity with the requirements of the law and rules of court governing civil actions. The party affirming is plaintiff, and the one denying or avoiding is defendant.

(b) When a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried.

(c) If a jury is not demanded, the court shall try the issue joined, make findings of fact and conclusions of law, and direct the entry of the appropriate judgment, as in civil actions.

(d) Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

§ 2232. New trials in probate proceedings

A motion for a new trial in probate proceedings may be made only in:

(1) cases of contests of wills, either before or after probate;

(2) proceedings to determine heirship and interests in estates; and

(3) cases where the issues of fact, of which a new trial is sought, were of such character as to entitle the parties to have them tried by a jury, whether or not they were so tried.

§ 2233. Costs

When not otherwise prescribed by this title, the district court may order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the district court.

§ 2234. United States as party; notice; actions on bonds; exceptions to accounts

When compensation, pension, insurance, or other allowance is made or awarded to estates of decedents by the United States Government or an agency thereof, the agency making or awarding the compensation, pension, insurance, or allowance shall have the same right as provided in this title for interested parties, heirs at law, and relatives, to:

(1) request notice of proceedings;
(2) commence and prosecute actions on the bonds of executors or administrators; and
(3) file exceptions in writing to accounts of executors or administrators and contest the accounts.

§ 2235. Application of procedure in civil actions

Except as otherwise provided by this title, the provisions of law and rules of court governing civil actions are applicable to and constitute the rules of practice in the proceedings mentioned in this title.

PART 4—ESTATES OF MISSING PERSONS

CHAPTER 101—TRUSTEES OF ESTATES OF PERSONS MISSING OVER 90 DAYS

§ 2501. Petition for appointment of trustee

When a resident of the Canal Zone, who owns or is entitled to the possession of real or personal property situated therein, is missing, or his whereabouts unknown, for 90 days, and a verified petition is presented to the division of the district court of which he is a resident by his spouse or any of his family or friends, representing that his whereabouts has been, for such time, and still is, unknown, and that his estate requires attention, supervision, and care of ownership, the court shall order the petition to be filed, and appoint a day for its hearing, not less than 10 days from the date of the order.

§ 2502. Publication of notice of hearing

The clerk of the court shall thereupon publish, for at least 10 days prior to the day so appointed, a notice in a newspaper of general circulation in the Canal Zone, stating that the petition will be heard at the courtroom of the court at the time appointed for the hearing. The court may direct further notice of the application to be given in such manner and to such persons at it deems proper.

§ 2503. Hearing; appointment of trustee

At the time fixed for the hearing, or at any subsequent time to which the hearing may be postponed, the court shall hear the petition and the evidence offered in support of or in opposition thereto. If satisfied that the allegations of the petition are true, and that the person remains missing, and his whereabouts unknown, the court shall appoint a suitable person to take charge and possession of the estate, and manage and control it under the direction of the court.

§ 2504. Preferences in appointment of trustee

In appointing a trustee, the court shall prefer the wife of the missing person, or her nominee, and, in the absence of a wife, a person

who is willing to act, and who would be entitled to participate in the distribution of the missing person's estate if he were dead.

§ 2505. Trustee's bond

A trustee appointed pursuant to this chapter shall give bond in the amount and as provided for by section 1371 of this title.

§ 2506. Trustee's powers and duties; family allowance

(a) The trustee shall take possession of the real and personal estate in the Canal Zone of the missing person, and collect and receive the rents, income, and proceeds thereof, collect all indebtedness owing to him, and pay the expenses thereof out of the trust funds, and pay such indebtedness of the missing person as may be authorized by the court.

(b) The court may direct the trustee to pay to the persons constituting the family of the missing person such sums of money for family expenses and support from the income of the estate as it may, from time to time, determine.

§ 2507. Accounting by trustee; removal

From time to time when directed by the court, the trustee shall account to and with the court for all his acts as trustee. At any time, upon good cause shown, the court may remove the trustee and appoint another in his place.

§ 2508. Sale or encumbrance of property; petition; order

The trustee may sell any or all of the personal or real property or mortgage any of the personal property of the missing person when it is considered by the court as being to the best interest of the estate and of all parties concerned including the heirs at law or legatees, and for that purpose shall file a petition with the court asking for an order directing and authorizing the sale or mortgage.

§ 2509. Same; notice of hearing

The petition shall be set for hearing not sooner than 10 days after the filing of the petition and notice thereof shall be given by the clerk of the court by posting a notice at the place where the court is held. Notice shall also be given by registered or certified mail to each of the persons who would be heirs at law of the missing person, if he were dead, and, if it appears that the missing person left a will, to each legatee mentioned therein, at their respective places of address, a return card being requested with each notice. If the address of a person is unknown the notice shall be sent by registered or certified mail addressed to the person at the post office of the place where the proceedings are pending, and an affidavit of the trustee filed showing that the address is unknown, and stating what efforts he has made to learn it.

§ 2510. Same; hearing; order

On the day of hearing the petition, proof shall be offered in behalf thereof showing the reasons for the making of the sale or mortgage. If the court finds that it will be for the best interests of all persons concerned in the estate of the missing person to have the sale or mortgage made, it shall order the trustee to sell any or all the property, real, personal, or both, or to mortgage any of the personal property, in the manner provided by this title for sales or mortgages of property of deceased persons. All the provisions of law regarding a sale or mortgage of property of deceased persons govern the sale or mortgage of property of missing persons under this section, including the provisions concerning confirmation of the sales by the court; except that a sale of real property may not take place before the expiration of eight months from the date of the appointment and qualification of the trustee.

§ 2511. Return of missing person; accounting

In the event the missing person returns, the court, upon his application or upon its own motion, shall require the trustee to render and file a verified account of the administration of the trust, and sections 1851–1864 of this title apply to the accounting.

§ 2512. Same; delivery of property

Upon the settling of the account of the trustee the court shall order the property of the missing person remaining in the hands of the trustee to be delivered to the owner thereof.

§ 2513. Delivery by trustee to executor or administrator after seven years

If, during the existence of a trust provided for in this chapter, administration of the estate of the missing person is had pursuant to chapter 103 of this title, the court shall require an accounting as provided by section 2511 of this title and shall order the property of the missing person remaining in the hands of the trustee to be delivered to the administrator or executor of the estate.

CHAPTER 103—ADMINISTRATION OF ESTATES OF PERSONS MISSING OVER SEVEN YEARS

Sec.

§ 2541. Missing person defined; administration as though dead

When a person owning property in the Canal Zone has been absent from his last known place of residence for the continuous period of seven years, with his whereabouts for that period unknown to the persons most likely to know thereof, he shall be deemed to be a missing person, and all his property in the Canal Zone may be administered, as though he were dead, in the same manner as provided for the administration of deceased persons by this title, subject to the conditions, restrictions and limitations prescribed by this chapter.

§ 2542. Jurisdiction; title of proceedings

(a) If the missing person was a resident of the Canal Zone at the time of his disappearance, the division of the district court of his residence has jurisdiction in the premises; if he was a nonresident, the division where any of his property is located has jurisdiction.

(b) Proceedings commenced and prosecuted under this chapter shall be entitled in the court, and "In the matter of the estate of . . . . . ., a missing person."

§ 2543. Petition; date of hearing

(a) When a verified petition is presented by the spouse or any of the family or friends of a missing person, representing that his whereabouts has been for a period of seven years and still is un-

known and that he left an estate which requires administration, the clerk of the court shall appoint a day for hearing the petition, not less than three months from the date of filing.

(b) The petition may be for administration or probate of the last will, as the case may be, of the missing person and shall be verified to the best of the knowledge and belief of the petitioner. The petition shall set forth a statement of the facts required as in the case of the administration of estates of deceased persons, and shall, in addition thereto, contain allegations as to the last known place of residence of the missing person, and when he disappeared therefrom; the fact that he has not been heard from by the persons most likely to hear, naming them and their relationship, for a period of seven years, and the fact that his whereabouts is unknown to those persons and to the petitioner.

§ 2544. Notice of hearing; publication; mailing

Notice of hearing the petition for administration or probate of the last will of the missing person shall be published in the form of similar notices of hearing in the administration of estates of deceased persons, once each week for eight successive weeks, the first publication to be at least three calendar months prior to the date set for the hearing of the petition. In addition, within 20 days after the filing of the petition, copies of the notice shall be sent by registered or certified mail to each person named in the petition as heir-at-law, next of kin, devisee and legatee, and to the last known address of the missing person; and proof by affidavit of the publication and mailing shall be filed at or prior to the hearing.

§ 2545. Hearing; appointment of executor or administrator; findings

At the time fixed for the hearing, or at any subsequent time to which the hearing is postponed, the court shall hear the petition and the evidence in support of or in opposition thereto, and, if satisfied that the allegations thereof are true, and that the person has remained missing, and his whereabouts unknown, continuously for a period of seven years, shall thereupon appoint a qualified person as executor or administrator as in the manner provided for the estates of deceased persons. If the court grants the order, it shall determine the time when the person left his last place of residence and abode and became missing and that his whereabouts has not been known continuously for a period of at least seven years. Upon the hearing, the court may consider the testimony of any witness likely to know the last place of residence and whereabouts of the alleged missing person, and may likewise receive in evidence and consider the affidavits and depositions of other competent witnesses and give the evidence such weight as it deems proper.

§ 2546. Suspension of disposition; exceptions

Except for the purposes of paying taxes, assessments, liens, insurance premiums, allowing claims for debts contracted by the missing person before his disappearance or to prevent the depreciation of property on account of neglect, or waste, or specifically perform contracts made by the missing person before his disappearance, a sale, mortgage or other disposition or distribution of the property of the missing person may not be had until the lapse of one year after the appointment and qualification of the executor or administrator.

§ 2547. Suspension of distribution; bond of distributee

Distribution of the property of the estate to the heirs, devisees, or legatees of the missing person may not be made in any event until after the lapse of the period of one year after the appointment and

qualification of the executor or administrator; nor until after the lapse of three years after the appointment and qualification of the executor or administrator, unless the distributee or assignee executes and delivers to the representative of the estate a surety company bond in a penal sum not less than the value of the property distributed and for such additional amount as the court may prescribe. The bond is subject to approval by the court, and shall be conditioned for the return of the property or the value thereof to the representative of the estate in case the missing person is adjudicated, in the manner set forth in this chapter, to be still living since the commencement of the seven-year period, and also conditioned to save the representative harmless from the damages and expenses of suits brought by the missing person or anyone succeeding to his or her rights, by reason of the distribution having been made during the period of three years.

§ 2548. Claim to be missing person; petition; issue of identity

If a person files a verified petition, within the period of three years after the appointment and qualification of a representative, claiming to be the missing person and also causes a copy thereof to be served personally or by registered or certified mail upon the legal representative and upon each of the heirs, legatees, and devisees, an issue shall thereupon be presented to the court to determine the identity of the claimant which issue shall be tried and determined by the court. The court may upon application or of its own motion require the claimant to give security to be approved by the court for all costs and expenses involved in the hearing and ultimate determination thereof, in case the issue is decided against the claimant.

§ 2549. Same; contents of petition

The verified petition of the claimant shall set forth the facts and circumstances of his disappearance and continued absence, and other facts and circumstances upon which he relies for his identification.

§ 2550. Vacation of administration proceedings; delivery of property to claimant

If the issue is determined in favor of the claimant, and it is determined that the missing person is still living, an order shall be made vacating all of the proceedings for administration, except those providing for the payment of taxes, assessments, liens, insurance premiums, allowed claims, the specific performance of contracts, preservation of the property, and any sale, encumbrance or other disposition of the property made in compliance with an order of the court; and thereupon the residue of the estate, less fees, costs and expenses thus far incurred, shall be surrendered and delivered to the claimant.

§ 2551. Determination of death; petition; order

If another person appears and files a verified petition, within the three-year period, claiming that the missing person died subsequently to the commencement of the seven-year period, and the claimant is entitled to the property or any portion thereof, as successor in interest to the rights of the absent person because of his death; and if the claimant also causes a copy of the petition to be served either personally or by registered or certified mail upon the legal representative of

the estate and upon each of the heirs, legatees, and devisees, an issue shall thereupon be tried and determined by the court as to the truth of the petition. The court may upon application or on its own motion require the claimant to give security to be approved by the court for costs and expenses involved in the hearing and ultimate determination thereof, in case the issue is decided against the claimant.

If the issue is determined in favor of the claimant, the court shall make and enter such order as the circumstances require.

§ 2552. Conclusive presumption of death; final distribution

If no person makes a claim during the three-year period, either to be the missing person, or to have succeeded to the rights of the missing person since the commencement of the seven-year period by reason of the death of the missing person, a conclusive presumption arises that the missing person died prior to the filing of the petition for administration or the probate of his will; and the estate shall be finally distributed accordingly, as far as the distribution has not already been accomplished; and by order of the court the estate shall be closed and the liability of the representative and his sureties to claimants ended, and the liability of distributees ended, and all bonds given by them cancelled. If in any case the period of absence as set forth in section 2541 of this title has exceeded 10 years at the time of filing the petition for the appointment of an administrator or probate of the will, the estate may be finally distributed and closed at the end of one year, without a bond being given, with like effect as provided for in this chapter at the expiration of the three-year period.

§ 2553. Limitation of actions

After the expiration of the periods of time provided for the final distribution of the estate, and after the missing person has been absent and missing for the period of 10 years as provided in this chapter, the statute of limitations shall be deemed to have run against all claimants; and no action, suit, petition or proceeding may be brought by the missing person or persons claiming under him or otherwise claiming an interest in the estate, against the executor or administrator or against a surety on a bond or against any of the distributees, to recover any part or portion of the estate.

§ 2554. Property and estates governed by chapter

This chapter applies to the property and estates of all missing persons as defined in this chapter, who have been missing and absent from their last known place of residence for the continuous period of seven years, whether the absence commenced before the effective date of this Code and has been completed, or is still running, or shall commence to run after the effective date of this Code.

§ 2555. Manner of administration and distribution of estate

The administrator or executor to whom letters are issued as provided in this chapter shall administer and distribute the estate of the missing person in the same general manner, method of procedure and with the same force and effect as provided by this title for the administration and settlement of the estates of deceased persons, except as otherwise modified, limited or directed by this chapter.

PART 5—GUARDIAN AND WARD

CHAPTER 121—RELATIONSHIP OF GUARDIAN AND WARD

§ 2801. Definition of relationship; applicability of trust law; control by court

A guardian is a person appointed to take care of the person or property, or of both the person and property, of another. The latter is a ward. The relation of guardian and ward is confidential and subject to the provisions of law relating to trusts. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

§ 2802. General or special guardians

Guardians are either general or special. A general guardian is a guardian of the person or of all the property of the ward within the Canal Zone, or of both. Every other guardian is a special guardian.

§ 2803. Appointment of guardian of person and estate of child by will or deed

Either parent of a legitimate child living or likely to be born may, by will or deed, appoint a guardian of the person or estate, or both, of the child, to take effect upon the death of the parent appointing:

(1) with the written consent of the other parent; or
(2) if the other parent is dead or incapable of consent.

If the child is illegitimate, the mother may make the appointment.

§ 2804. Appointment of guardian of person and estate of incompetent by will or deed

Either parent of an unmarried incompetent person, or of an incompetent person whose marriage has been annulled or dissolved by death or divorce, may, by will or deed, appoint a guardian of the person or estate, or both, of the incompetent, to take effect upon the death of the person appointing:

(1) with the written consent of the other parent; or
(2) if the other parent is dead or incapable of consent.

If the incompetent person is married, the spouse may make the appointment.

§ 2805. Appointment of general guardian by court; multiple guardians; bonds; deposit of moneys of small estates; confirmation of other appointments

(a) The district court shall appoint a general guardian of the person or estate, or both, of minors and incompetent persons, when necessary or convenient, and when a guardian has not been appointed for the purpose by will or deed. The court may appoint more than one guardian and shall require either a separate bond from each or a joint and several bond. Where two or more guardians are appointed as coguardians, each shall be governed and liable in all respects as a sole guardian.

(b) If the estate does not exceed $10,000 in value, the court may require that the money in the estate be deposited in a bank or trust company or be invested in an account in an insured savings and loan association, subject to withdrawal only upon the order of the court. In such cases, a bond is not required of the guardian.

(c) When requested to do so, the court shall confirm an appointment made by will or deed, upon the same procedure and notice as in the case of appointment by the court.

§ 2806. Testamentary guardians; qualification, powers, duties, and bond

A testamentary guardian shall qualify and has the same powers and shall perform the same duties with regard to the person and estate of his ward as guardians appointed by the court, except as far as his powers and duties are legally modified, enlarged, or changed by the will by which he was appointed, and except that the guardian need not give bond unless directed to do so by the court.

§ 2807. Rules for awarding custody or appointment of guardian of minor

(a) In awarding the custody of a minor, or in appointing a general guardian, the court or officer shall be guided by what appears to be for the best interest of the child in respect to its temporal, mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider the preference in determining the question.

(b) If the minor resides in the Canal Zone and is over 14 years of age, he may nominate his own guardian, either of his own accord or within 10 days after being cited by the court; and the nominee shall be appointed if approved by the court. When a guardian has been appointed for a minor under 14 years of age, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court.

§ 2808. Order of preference in awarding custody of minor

Of persons equally entitled in other respects to the custody of a minor, preference shall be given, as follows:

(1) to a parent;

(2) to one who was indicated by the wishes of a deceased parent;

(3) to one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) to a relative.

§ 2809. Parents adversely claiming custody or guardianship

As between parents claiming the custody or guardianship adversely to each other, neither has priority. Other things being equal, the custody or guardianship should be given:

(1) if the child is of tender years, to the mother; or

(2) if the child is of an age to require education and preparation for labor and business, to the father.

§ 2810. Abandonment as forfeiture of right to guardianship

A parent who knowingly or willfully abandons, or having the ability to do so, fails to maintain, his minor child under 14 years of age, forfeits all right to the guardianship.

§ 2811. Marriage of guardian

The marriage of a guardian does not extinguish or affect his authority as a guardian.

§ 2812. Trust companies as guardians

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as a guardian of the estate, in like manner as an individual. The appointment as guardian applies to the estate only, and not to the person.

CHAPTER 123—WHEN GUARDIANSHIP NOT NECESSARY

§ 2851. Small estates of minors

If a minor has no guardian of his estate, money belonging to the minor not exceeding $100 or other property belonging to the minor not exceeding $100 in value may be paid or delivered to a parent of the minor entitled to his custody to hold for the minor, upon written assurance verified by the oath of the parent that the total estate of the minor does not exceed $500 in value. The written receipt of the parent shall be an acquittance of the person making the payment of money or delivery of property.

§ 2852. Compromise of minors' claims

(a) If a minor has a disputed claim for money against a third person, the father, and if the father is dead or legally incompetent or has deserted or abandoned the minor, then the mother shall have the right to compromise the claim, but before the compromise is valid or has any effect it shall be approved by the division of the district court where the minor resides, upon a verified petition in writing, filed with the court.

(b) If the court approves the compromise, the district court may direct the money to be paid to the father or mother of the minor, with or without the filing of a bond, or it may require a general guardian or guardian ad litem to be appointed and the money to be paid to the guardian or guardian ad litem with or without a bond as in the discretion of the court seems to the best interests of the minor.

(c) The clerk of the district court may not charge a fee for filing the petition for leave to compromise or for placing it upon the calendar to be heard by the court.

§ 2853. Accounting by parent

The parent receiving money under the provisions of this chapter shall account to the minor for the money when the minor reaches the age of majority.

§ 2854. Married minors

A guardian of the person of a married minor may not be appointed solely by reason of minority. A guardian of the estate of a married female who has reached the age of 18 years may not be appointed solely by reason of her age.

CHAPTER 125—APPOINTMENT OF GUARDIANS FOR MINORS

Sec.

§ 2881. Jurisdiction to appoint; petition; several minors; bond

(a) When it appears necessary or convenient, the division of the district court of which a minor is an inhabitant or resident, or in which a minor who resides outside the Canal Zone has estate, may appoint a guardian for his person or estate, or both.

(b) The appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if 14 years of age or over.

(c) The court may issue letters of guardianship of the person or estate, or both, of more than one minor upon the same application. When there is an application for more than one minor, the court may permit a joint or separate bond in the multiple application.

§ 2882. Notice of proceedings

Before making the appointment, the court shall cause such notice as it deems reasonable to be given to the person having the care of the minor, and to such relatives of the minor residing in the Canal Zone as it deems proper. In all cases notice shall be given to the parents of the minor or proof made to the court that their addresses are unknown, or that for some other reason the notice can not be given.

§ 2883. Temporary custody pending hearing; warrant

(a) When it appears to the court, either from a verified petition or from affidavits, that the welfare of the minor will be imperiled if he is allowed to remain in the custody of the person then having his care, the court may make an order providing for his temporary custody until a hearing can be had on the petition.

(b) When it appears to the court that there is reason to believe that the minor will be carried out of the jurisdiction of the court, or will suffer an irreparable injury before compliance with an order providing for his temporary custody can be enforced, the court may at the time of making the order providing for his temporary custody cause a warrant to be issued, reciting the facts, and directed to the marshal, commanding him to take the minor from the custody of the person in whose care the minor then is and place him in custody in accordance with the order of the court.

§ 2884. Public administrator as guardian of estates of minors

(a) The district court may appoint the public administrator guardian of the estate of any minor.

(b) The public administrator shall comply with all the provisions of this Part with respect to the guardianship of estates of minors by other persons, except that:

(1) his official bond and oath shall satisfy the requirements with respect to a guardian's bond and oath; and

(2) when notice is required to be given, the notice may, in the court's discretion, be waived or given by posting.

CHAPTER 127—APPOINTMENT OF GUARDIANS FOR INCOMPETENT PERSONS

Sec.

§ 2921. Incompetent person defined

As used in this Part, "incompetent", "mentally incompetent", or "incapable" means that a person is, by reason of old age, mental illness or other disease, or from any other cause, unable, when unassisted, properly to manage and take care of himself or his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

§ 2922. Petition for appointment of guardian of incompetent person; notice; attendance at hearing

(a) A relative or friend may file a verified petition in the district court alleging that a person is incompetent, and setting forth the names and residences, as far as they are known to the petitioner, of the relatives of the alleged incompetent person within the second degree residing within or without the Canal Zone. The clerk shall set the petition for hearing by the court and issue a citation directed to the alleged incompetent person setting forth the time and place of hearing so fixed by him.

(b) If the alleged incompetent person is within the Canal Zone the citation and a copy of the petition shall be personally served on him in the same manner as provided by law for the service of a summons. If he is not within the Canal Zone the citation and a copy of the petition shall be delivered to him, personally. In all cases service shall be made on the alleged incompetent person at least 10 days before the time of hearing unless the time is shortened by the court for good cause shown.

(c) Notice of the nature of the proceedings and of the time and place of the hearing shall be mailed by the petitioner to each of the relatives of the alleged incompetent person named in the petition at least 15 days before the time of hearing unless the time is shortened by the court for good cause shown. The court may order that similar notice be given to other persons in such manner as the court may direct. A relative or friend of the alleged incompetent person may appear and oppose the petition.

(d) If the alleged incompetent person is within the Canal Zone and is able to attend he shall be produced at the hearing, and if he is not able to attend by reason of physical inability or by reason that his presence in court would retard or impair his recovery or would increase his mental debility, the inability or harmful effect shall be evidenced by the affidavit of a licensed physician or surgeon, or other duly licensed medical practitioner, unless the alleged incompetent person is a patient at a hospital in the Canal Zone in which case the affidavit shall be by the medical superintendent or acting medical superintendent of the hospital.

(e) If the alleged incompetent person is not within the Canal Zone and if the court determines that his attendance at the hearing is necessary in the interest of justice, the court may order him to be produced at the hearing upon penalty of dismissing the petition if he is not produced. If such an order is made and it is contended that the alleged incompetent person is not able to attend by reason of physical inability or by reason that his presence in court would retard or im-

pair his recovery or would increase his mental debility, the inability or harmful effect shall be evidenced by the affidavit of a licensed physician or surgeon, or other licensed medical practitioner, unless the alleged incompetent person is a patient at a hospital in which case the affidavit shall be by the medical director or medical superintendent or acting medical director or medical superintendent of the hospital.

(f) Affidavits provided by this section are prima facie evidence of the facts contained therein.

§ 2923. Appointment of guardian after hearing; preferences

(a) After hearing and examination upon the petition, if it appears to the court that the person in question is incapable of taking care of himself and managing his property, the court shall appoint a guardian of his person or estate, or both, with the powers and duties specified in this Part.

(b) In awarding letters of guardianship of the person or estate, or both, of an incompetent person, the court shall appoint as guardian such person as may have been designated by will or deed pursuant to section 2804 of this title unless good cause to the contrary is shown.

§ 2924. Public administrator as guardian of estates of incompetent persons

(a) The district court may appoint the public administrator guardian of the estate of an incompetent person.

(b) The public administrator shall comply with all the provisions of this Part with respect to the guardianship of estates of incompetent persons by other persons, except that:

(1) his official bond and oath shall satisfy the requirements with respect to a guardian's bond and oath; and

(2) when notice is required to be given, the notice may, in the court's discretion, be waived or given by posting.

§ 2925. Restoration to capacity

(a) A person who has been declared incompetent, or his guardian, or a relative within the third degree, or a friend, may petition the division of the district court in which he was declared incompetent, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that the person is then competent.

(b) Upon receiving the petition, the court shall appoint a day for a hearing before the court. If the petitioner requests it, the court shall order an investigation before a jury, which shall be summoned and impaneled in the same manner as juries in civil actions. The court shall cause notice of the trial to be given to the guardian of the person so declared incompetent, if there is a guardian, and to the person's spouse, if any, and to his or her father or mother, if living in the Canal Zone.

(c) On the trial, the guardian or relative of the person so declared incompetent, and, in the discretion of the court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court on its own motion.

(d) If it is found that the person is of sound mind, and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship, if he is not a minor, shall cease.

CHAPTER 129—OATHS, BONDS, AND LETTERS

Sec.

§ 2961. Oaths and bonds; issuance of letters

(a) Before an order appointing a guardian takes effect, and before letters issue, the court shall require the person appointed to take an oath and give a bond.

(b) The guardian shall take an oath, which shall be indorsed upon or attached to his letters, that he will perform the duties of his office as guardian according to law.

(c) The guardian shall give a bond to the ward, with sufficient sureties approved by the court, conditioned that the guardian will faithfully execute the duties of his trust according to law. The bond shall be in such sum as the court may order, but not less than twice the value of the personal property and the probable value of the annual rents, issues, and profits of property belonging to the ward. When the bond is given by an authorized surety company, however, the court may fix the amount of the bond at not less than the value of the personal property and the probable value of the annual rents, issues, and profits of property belonging to the ward.

(d) Sections 1374 and 1375 of this title and sections 431 and 432 of Title 3 apply to guardians appointed by the court, guardians' bonds, and the sureties thereon.

(e) Upon taking the oath and filing the approved bond, letters of guardianship shall issue to the person appointed. The letters of guardianship shall be substantially in the same form as letters of administration.

§ 2962. New bonds; discharge of sureties

When the court deems it necessary, it may require a new bond to be given by a guardian; and when it appears that injury can not result therefrom to those interested in the estate the court may discharge the existing sureties from further liability, after such notice as the court directs.

§ 2963. Release of sureties

Sections 1380–1382 of this title apply to guardians, guardians' bonds, and the sureties thereon.

§ 2964. Bonds; filing; actions

Every bond given by a guardian shall be filed and preserved in the office of the clerk of the district court, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

§ 2965. Limitation of actions on guardians' bonds

An action may not be maintained against the sureties on a bond given by a guardian, unless it is commenced within three years from the discharge or removal of the guardian; but if at the time of the discharge the person entitled to bring the action is under a legal disability to sue, the action may be commenced at any time within three years after the disability is removed.

§ 2966. Recording letters of guardianship

Letters of guardianship issued under this Part, with the affidavits and certificates thereon, shall be recorded by the clerk of the court having jurisdiction of the persons and estates of the wards.

§ 2967. Oaths and affidavits of trust companies

If it is required that a guardian of the estate shall qualify by taking and subscribing an oath, or an affidavit is required, it is a sufficient qualification by a corporation or association receiving an appointment as guardian of the estate if the oath is taken and subscribed, or the affidavit is made, by the president, vice president, secretary, manager, trust officer, or assistant trust officer thereof.

CHAPTER 131—POWERS AND DUTIES OF GUARDIANS

Sec.

§ 3001. General powers; duration

(a) Until legally discharged or until the guardianship terminates as provided by chapter 141 of this title, the guardian of a minor has the care and custody of the person and the care of the education of the ward, and the management of his estate, unless he is appointed guardian only of the person of the ward, in which case the guardian shall look to the support, health, and education of the ward.

(b) Until legally discharged or until the guardianship terminates as provided by chapter 141 of this title, the guardian of an incompetent person has the care and custody of the person of the ward, or the management of all his estate, or both, according to the order of appointment.

(c) The guardian of a minor or incompetent person may fix the residence of the ward at any place in the Canal Zone, but not elsewhere without the permission of the court.

§ 3002. Payment and collection of debts; compromise of claims; representation of ward

(a) The guardian shall pay the ward's just debts out of the ward's personal estate and the income of his real estate, if sufficient; if not, then out of his real estate upon selling or mortgaging it and disposing of the proceeds in the manner provided by chapter 133 of this title.

(b) The guardian shall demand, sue for, and collect all debts due to the ward, or, with the approval of the court, he may give the debtor a discharge upon such terms as may appear to the court to be for the best interest of the estate of the ward.

(c) The guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose.

§ 3003. Management of estate; application of income; credit for advancements

(a) The guardian of an estate shall manage it frugally and without waste, and apply the income, as far as may be necessary, to the comfortable and suitable support, maintenance, and education of the ward and his family, if any; and if the income is insufficient for that purpose, the guardian may sell or mortgage the real or personal property, as provided by chapter 133 of this title, and shall apply the proceeds of the sale or mortgage, as far as may be necessary, for the support, maintenance, and education of the ward and his family, if any.

(b) When a guardian has advanced, for the suitable support, maintenance, or education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and this is made to appear to the satisfaction of the court by proper vouchers and proofs, the guardian shall be allowed credit therefor in his settlements.

§ 3004. Support, maintenance, or education; enforcement against guardian; payments to third persons

(a) When a guardian fails, neglects, or refuses to furnish suitable and necessary support, maintenance, and education for his ward, the court may order him to do so, and enforce the order by proper process.

(b) When a third person, at the request of a ward, supplies a ward with suitable and necessary support, maintenance, or education, and it is shown to have been done after refusal or neglect of the guardian to supply it, the court may direct the guardian to pay therefor out of the estate, and enforce the payment by due process.

§ 3005. Minor having father living; support, maintenance, and education

If a minor having a father living has property, the income of which is sufficient for his support, maintenance, and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the support, maintenance, and education of the minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and as directed by the court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

§ 3006. Incompetent wife; care or support

If the husband is unable to provide suitably for the care or support of a wife over whose estate a guardian has been appointed by reason of incompetency, the expense of providing the care or support, may, to the extent necessary, be charged against and defrayed out of the estate, as previously directed by the court or as subsequently approved by the court in settling the accounts of the guardian of the estate; for this purpose the guardian may sell or mortgage estate of the ward as provided in this title.

§ 3007. Partition; powers of guardian

(a) after obtaining authority from the court having jurisdiction of the estate, a guardian may:

(1) join in and assent to a partition of the real or personal estate of his ward, whenever such an assent may be given by any person; or

(2) consent to a partition of the real or personal estate of his ward without action, agree upon the share to be set off to the ward, and execute a release in behalf of his ward to the owners of the shares, of the parts to which they may be respectively entitled.

(b) The order of court granting authority under subsection (a) of this section shall be made only after a hearing in open court upon petition of the guardian after notice of at least 10 days, mailed by the clerk of the court to all known relatives of the ward residing in the Canal Zone.

§ 3008. Attorneys' fees; judgments for minors

(a) Contracts for attorneys' fees made by or for the benefit of minors are void, and when a judgment is recovered by or on behalf of a minor, the attorneys' fees chargeable against the minor shall be fixed by the court in which the judgment is rendered.

(b) If a judgment recovered by or on behalf of a minor is for money, and there is no general guardian, one shall be appointed by the court, and the entire amount of the judgment shall be paid to and shall be cared for by the general guardian, under the control of the court, except that where a minor has brought an action by a guardian ad litem and has recovered a money judgment not exceeding $500, exclusive of costs, and the guardian ad litem is a parent or blood relative of the minor, then, with the approval of the court that rendered the judgment, the whole amount of the judgment may be paid directly to the guardian ad litem without a bond being required therefor.

(c) In any of the cases provided for in this section, the court may direct the amount fixed as attorneys' fees to be paid directly to the attorney, and the balance to be paid to the guardian ad litem of the minor, or to the general guardian if a general guardian has been appointed or is required by the court.

§ 3009. Additional conditions imposed by court

When a person is appointed guardian of a minor, the court may, with his consent, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor and for the care and custody of his property. The performance of these conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond shall be responsible.

CHAPTER 133—SALES, MORTGAGES, AND CONVEYANCES

Sec.

§ 3041. Sale or mortgage of property

Subject to confirmation by the court, a guardian may sell the real or personal estate or mortgage the real estate of his ward if:

(1) the income of the estate is insufficient to support and maintain the ward and his family, or to support, maintain, and educate a minor ward, or to pay for the care, treatment, and support of a ward who is confined in a hospital as defined in section 1631 of Title 5;

(2) the personal estate and the income of the real estate are insufficient to pay the ward's just debts; or

(3) it is for the advantage, benefit, and best interests of the estate of the ward or of such members of his family as he is legally bound to support and maintain.

§ 3042. Borrowing money and mortgaging personal property

(a) When it appears to be to the advantage of an estate of a minor or incompetent person under guardianship to borrow money upon a note or notes, either unsecured, or to be secured by a chattel mortgage or other lien upon the personal property of the ward, or any part thereof, in any of the cases specified in section 3041 of this title, or in order to pay, reduce, extend, or renew a mortgage or lien already subsisting upon the personal property of the ward or a part thereof, and as often as occasion therefor arises in the course of the guardianship, the court may, by order, authorize and direct the guardian to borrow the money and to execute the note or notes, and, in the proper case, to execute the chattel mortgage or to give other security by way of pledge or other lien on the personal property.

(b) Except as provided in this subsection, the proceedings to be taken to obtain an order under this section and the effect thereof shall be the same as provided by sections 1742–1744 of this title with respect to the estate of a decedent and the executor or administrator thereof. The notice of hearing of the petition by the guardian or a person interested in the estate under section 1742 of this title shall be given by the clerk by posting and by mailing to the nearest relatives of the ward residing in the Canal Zone, and to other persons interested in the estate, for the period and in the manner provided by section 1583 of this title.

(c) A chattel mortgage, pledge, or other lien made and delivered under this section is effectual to mortgage, pledge, or subject to lien all the right, title and interest which the ward has in the property described therein.

(d) Notes signed and delivered in the negotiation of an unsecured loan under this section are effectual to create a valid obligation and debt against the ward, and shall be payable out of the funds of his estate.

(e) An irregularity in proceedings under this section with respect to the borrowing of money upon a note or notes secured by a chattel mortgage, pledge, or other lien, does not impair or invalidate the proceedings or the notes and mortgage, pledge, or other lien given in pursuance thereof, and, except as provided in subsection (f) of this section, the mortgagee, his heirs and assigns, possess the same rights and remedies on the note or notes and mortgage, pledge, or other lien as if it had been made by the minor ward after reaching the age of maturity or the incompetent ward when legally competent.

(f) Upon a foreclosure, if the proceeds of the encumbered property are insufficient to pay the note or notes, and mortgage, pledge, or other lien, a judgment or claim for any deficiency of the proceeds to satisfy the obligation, or the costs or expenses of sale, may not be had or allowed, except in cases where the note or notes, mortgage, pledge or other lien were given to pay, reduce, extend, or renew a lien upon the interest of the minor in the property at the time it vested in him, or upon the estate of the incompetent ward at the time his incompetency was declared by the court.

§ 3043. Procedure for sales of property

All proceedings by guardians concerning sales of property of their wards shall be had and made as required by Part 3 of this title concerning estates of decedents, unless otherwise specially provided in this Part. All known relatives of the ward within the third degree residing in the Canal Zone whose addresses are known to the guardian shall within two days after filing of the return of sale be served by mail with a brief notice of the time set for hearing of the return.

§ 3044. Application and investment of proceeds of sales

(a) If the estate is sold for the purposes mentioned in this chapter, the guardian shall apply the proceeds of the sale to those purposes, as far as necessary, and put out the residue, if any, at interest, or invest it in the best manner in his power, until the capital is needed for the maintenance of the ward and his family, or the education of his children, or for the education of the ward if a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

(b) If the estate is sold for the purpose of putting out or investing the proceeds, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the court.

§ 3045. Conveyances and transfers to complete contracts

(a) Proceedings for the completion of contracts for the sale of real estate by guardians shall be had and made as required by Part 3 of this title concerning the conveyance of real estate by executors and administrators under sections 1771–1779 of this title.

(b) When a person who is bound by a contract in writing to convey real estate is afterwards, and before making the conveyance, adjudged to be an incompetent person, the court may make an order authorizing and directing his guardian to convey the real estate to the person entitled thereto. The decree may be made pursuant to sections 1771–1779 of this title.

(c) When a person who is bound by contract in writing to convey real estate, or to transfer personal property, dies before making conveyance or transfer, and in all cases when the decedent, if living might be compelled to make the conveyance or transfer, the court having jurisdiction of the guardianship proceedings of a minor may make a decree authorizing and directing the guardian of the minor, who has succeeded by distribution to the estate of the deceased person, to convey or transfer the real estate or personal property to the person entitled thereto. Sections 1771–1779 of this title apply to conveyances by guardians as provided in this subsection.

§ 3046. Limitation of actions for the recovery of property

An action for the recovery of property sold by a guardian may not be maintained by the ward, or by a person claiming under him, unless it is commenced within three years after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years next after the removal thereof.

CHAPTER 135—INVENTORY AND ACCOUNTING

Sec.

§ 3081. Inventory and appraisement

(a) Within 30 days after his appointment, or within such further period as the court, for reasonable cause, allows, the guardian shall return to the court a verified inventory of the estate of his ward. The estate of the ward described in the first inventory shall be appraised by appraisers, appointed, sworn, and acting in the manner provided for regulating the settlement of the estates of decedents. The inventory, with the appraisement of the property therein described, shall be recorded by the clerk of the court in a book kept in his office for that purpose.

(b) When property of the estate of a ward is discovered which is not included in the inventory of the estate already returned, and when any other property has been succeeded to or acquired by a ward, or for his benefit, like proceedings shall be had for the return and appraisement thereof and the service of the same as are provided in this section in relation to the first inventory and return.

§ 3082. Failure to file inventory or account; revocation of letters; liability on bond

If a guardian neglects or refuses to return an inventory or render an account within the time prescribed, the court, upon notice, may revoke his letters of guardianship, and he shall be liable on his bond the failure.

§ 3083. Examination of persons suspected of defrauding wards or concealing property

Upon complaint by a guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, smuggled, or fraudulently disposed of, any of the property, or an instrument in writing belonging to the ward or to his estate, the district court may cite the suspected person to appear before the court, and may examine and proceed against him on such charge in the manner provided by Part 3 of this title, with respect to persons suspected of and charged with concealing, embezzling, smuggling, or fraudulently disposing of the effects of a decedent.

§ 3084. Accounts of guardians; joint guardians

(a) At the expiration of a year from the time of his appointment, and as often thereafter as may be required by the court, the guardian shall present his account to the court for settlement and allowance.

(b) When an account is rendered by two or more joint guardians, the court may allow the account upon the oath of any of them.

§ 3085. Termination of guardianship; continuing jurisdiction to settle accounts

The termination of the relation of guardian and ward by the death of either guardian or ward or by the ward's attaining his majority or being restored to capacity does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian.

§ 3086. Accounts of deceased guardians

If a guardian dies, his accounts may be presented by his personal representative to, and settled by, the court in which the estate of which he was guardian is being administered. Upon petition of the successor of the deceased guardian, the court may compel the personal representative of the deceased guardian to render an account of the administration of his testator or intestate, and the court shall settle the account as in other cases.

§ 3087. Expenses and compensation of guardians

A guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and have such compensation for his services as the court in which his accounts are settled deems just and reasonable. He shall also be allowed reasonable and proper disbursements, made after the legal termination of the guardianship, but while that relation, by consent or acquiescence of the parties, still subsists in fact, and before the discharge of the guardian by the court, and which were made by the consent, express or implied, of the ward, and for his benefit or the benefit of his estate.

§ 3088. Investment and managment of wards' estates; orders of court

On the application of a guardian or a person interested in the estate of a ward, after such notice to persons interested therein as the court directs, the court may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his

hands, in a manner most to the interest of all concerned therein, and the court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

CHAPTER 137—NONRESIDENT WARDS

Sec.

§ 3121. Appointment of guardians of nonresidents

The district court may appoint a guardian of the person or estate, or both, of a minor or incompetent person, who has no guardian within the Canal Zone, legally appointed by will, deed, or otherwise, and who resides out of the Canal Zone, and has estate within the division or who, though not having such an estate, is within the division, upon petition of a friend of the person or any one interested in his estate, in expectancy or otherwise. Before making the appointment, the court shall cause notice to be given to all persons interested, in such manner as the court deems reasonable.

The guardianship which is first lawfully granted of a person residing out of the Canal Zone extends to all the estate of the ward within the Canal Zone.

§ 3122. Powers and duties of guardians of nonresidents; bonds

(a) A guardian appointed pursuant to section 3121 of this title has the same powers and duties, with respect to the estate of the ward within the Canal Zone, and with respect to the person of the ward, if the ward comes to reside within the Canal Zone, as are prescribed with respect to any other guardian appointed under this Part.

(b) The guardian shall give bond to the ward, in the manner and with the like conditions as provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to the estate and effects which come to his hands in the Canal Zone.

§ 3123. Removal of ward's property

When the guardian and ward are both nonresidents, and the ward is entitled to property in the Canal Zone which may be removed to a State or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, the property may be removed to the State or foreign country of the ward's residence, upon the application of the guardian to the division of the district court in which the estate of the ward, or the principal part thereof, is situated.

§ 3124. Same; notice; certificate

(a) The application pursuant to section 3123 of this title shall be made upon 10 days' notice to the resident executor, administrator, or guardian, if any.

(b) Upon the application, the nonresident guardian shall produce and file:

(1) a certificate, under the hand of the clerk and the seal of the court from which his appointment was derived, showing:

(A) a transcript of the record of his appointment;

(B) that he has entered upon the discharge of his duties; and

(C) that he is entitled, by the laws of the State of his appointment, to the possession of the estate of the ward; or

(2) a certificate, under the hand of the clerk and the seal of the court having jurisdiction in the country of his residence of the estates of persons under guardianship, or of the highest court of the country, attested by a minister, consul, or vice consul of the United States, resident in the country, that, by the laws of the country, the applicant is entitled to the custody of the estate of his ward, without the appointment of a court.

§ 3125. Same; order; discharge of local fiduciary

(a) Upon an application pursuant to sections 3123 and 3124 of this title, unless good cause to the contrary is shown, the court shall make an order granting to the guardian leave to take and remove his ward's property to the State or place of his residence, which is authority to him to sue for and receive the property in his own name, for the use and benefit of his ward.

(b) The order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the clerk of the court the nonresident guardian's receipt therefor, and transmitting a duplicate receipt, or a certified copy of the receipt, to the court from which the nonresident guardian received his appointment.

CHAPTER 139—SUSPENSION, REMOVAL, AND RESIGNATION

Sec.

§ 3161. Removal of guardian

The district court may remove a guardian appointed by will or deed or by the court:

(1) for waste or mismanagement of the estate, or abuse of his trust;

(2) for failure to file an inventory or to render an account within the time allowed by law, or for continued failure to perform his duties;

(3) for incapacity to perform his duties suitably;

(4) for gross immorality;

(5) for having an interest adverse to the faithful performance of his duties;

(6) for removal from the Canal Zone;

(7) in the case of a guardian of the property, for insolvency; or

(8) when it is no longer necessary that the ward be under guardianship.

§ 3162. Removal; notice; surrender of estate; suspension of powers pending hearing

The removal of a guardian may be ordered by the district court after such notice to the guardian as the court requires. The court may compel the guardian to surrender the estate of the ward to the person found to be lawfully entitled thereto. Pending the hearing, the court may suspend the powers of the guardian to such extent as it deems necessary.

§ 3163. Resignation; appointment to fill vacancy

(a) A guardian may resign when it appears proper to allow the resignation.

(b) Upon the resignation or removal of a guardian, the court may appoint another in his place, after notice and hearing as in the case of an original appointment.

§ 3164. Revocation of letters for contempt

When a guardian is committed for contempt in disobeying a lawful order of the court, and has remained in custody for 30 days without obeying the order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint another person entitled thereto to succeed him.

CHAPTER 141—TERMINATION OF GUARDIANSHIP

Sec.
3201. Termination by marriage, majority, or court order.
3202. Survivorship of joint guardians.
3203. Release by ward.
3204. Discharge after majority.

§ 3201. Termination by marriage, majority, or court order

(a) If the appointment of a guardian was made solely because of the ward's minority, the marriage of a minor ward terminates the guardianship of the person; and the guardianship of the estate of a minor ward is terminated upon his attaining majority as provided by section 31 of Title 4.

(b) If the appointment of a guardian was made solely because of the ward's minority, the guardianship is terminated by his obtaining majority.

(c) In all other cases the guardianship is terminated only by order of the court upon application of the guardian or the ward, after such notice to the other as the court requires, or by restoration of the ward to capacity pursuant to chapter 127 of this title.

§ 3202. Survivorship of joint guardians

On the death of one joint guardian, the power continues to the survivor or survivors until a further appointment is made by the court.

§ 3203. Release by ward

After a ward has reached his majority, he may settle accounts with his guardian and give him a release, which is valid if obtained fairly and without undue influence.

§ 3204. Discharge after majority

Except as otherwise provided by this Part, a guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

CHAPTER 143—NOTICES AND PROCEDURE

Sec.
3241. Requests for special notice.
3242. United States as party; notice; actions on bonds; exceptions to accounts.
3243. Order appointing guardians; entry and filing.
3244. Procedure generally.
3245. Guardians ad litem.

§ 3241. Requests for special notice

(a) At any time after the issuance of letters of guardianship upon the estate of a minor or incompetent person, a relative of the ward, or the attorney for a relative, may serve upon the guardian, or upon the guardian's attorney, and file with the clerk of the court wherein administration of the ward's estate is pending, a written request, stating his post-office address and stating that he desires special notice of any or all of the following matters, steps, or proceedings in the administration of the estate:

(1) filing of the return of sales of any property of the ward's estate;

(2) filing of accounts;

(3) filing of application for removal of any property of the ward's estate to a foreign jurisdiction;

(4) filing of petitions for partition of any property of the ward's estate;

(5) proceedings for removal, suspension or discharge of the guardian, or final determination of the guardianship.

(b) Thereafter a brief notice of the filing of any such petitions, applications, accounts, or proceedings, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to the relative, or his attorney, at his stated post-office address, and deposited in the post office, within two days after the filing of the petition, account, application, or the commencement of the proceedings; or personal service of the notice may be made on the relative, or his attorney, within two days, and the personal service shall be equivalent to deposit in the post office. Proof of mailing or of personal service shall be filed with the clerk before the hearing of the matter.

(c) If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order or judgment, and the judgment shall be final and conclusive upon all persons.

§ 3242. United States as party; notice; actions on bonds; exceptions to accounts

When compensation, pension, insurance, or other allowance is made or awarded to minor or incompetent persons for whom guardians have been appointed, or to their estates, by the United States Government or a department or agency thereof, the department or agency making or awarding the compensation, pension, insurance, or allowance shall have the same right as provided in this title for interested parties and relatives to:

(1) request notice of proceedings;

(2) commence and prosecute actions on guardians' bonds;

(3) petition the court for appointment or removal of guardians of minor or incompetent persons; and

(4) file exceptions in writing to guardians' accounts and contest the accounts.

§ 3243. Order appointing guardians; entry and filing

An order appointing a guardian becomes a decree of the court and shall be entered at length in the records of the court, or shall be signed by the judge and filed.

§ 3244. Procedure generally

Part 3 of this title, relating to the estates of decedents, as far as they relate to the practice in the district court, applies to proceedings under this Part.

§ 3245. Guardians ad litem

This Part does not affect or impair the power of the court to appoint a guardian ad litem to defend the interests of a minor or incompetent person interested in a suit or matter pending therein.

PART 6—TRUSTS AND TRUSTEES

CHAPTER 161—TRUSTS GENERALLY

SUBCHAPTER I—NATURE AND CREATION OF A TRUST

SUBCHAPTER II—OBLIGATIONS OF TRUSTEES

SUBCHAPTER III—OBLIGATIONS OF THIRD PERSONS

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Subchapter I—Nature and Creation of a Trust

§ 3501. Classification of trusts

A trust is either:

(1) voluntary; or

(2) involuntary.

§ 3502. Voluntary trust defined

A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

§ 3503. Involuntary trust defined

An involuntary trust is one which is created by operation of law.

§ 3504. Parties to the contract

The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

§ 3505. Trustee defined

One who voluntarily assumes a relation of personal confidence with another is a trustee, within the meaning of this chapter, not only as to the person who reposes the confidence, but also as to all

persons of whose affairs he thus acquires information which was given to that person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

§ 3506. Purposes for which trust may be created

A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by chapter 25 of Title 4, relating to the transfer of property.

§ 3507. Creation of voluntary trust as to trustor and beneficiary

A voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

(1) an intention on the part of the trustor to create a trust; and

(2) the subject, purpose, and beneficiary of the trust.

§ 3508. Creation of voluntary trust as to trustee

A voluntary trust is created, as to the trustee, by any words or acts of his indicating with reasonable certainty:

(1) his acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and

(2) the subject, purpose, and beneficiary of the trust.

§ 3509. Involuntary trustee defined

One who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner.

§ 3510. Involuntary trust resulting from fraud, accident, mistake, etc.

One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

Subchapter II—Obligations of Trustees

§ 3531. Good faith

In all matters connected with his trust, a trustee shall act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 3532. Use of trust property for own profit

A trustee may not use or deal, in any manner, with the trust property for his own profit, or for any other purpose unconnected with the trust.

§ 3533. Prohibited transactions; exceptions

A trustee or his agent may not take part in a transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except:

(1) when the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

(2) when the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or

(3) when some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court grants permission for the latter, in the manner above prescribed.

§ 3534. Influence to obtain advantage

A trustee may not use the influence which his position gives him to obtain an advantage from his beneficiary.

§ 3535. Undertaking trust adverse to interest of beneficiary

A trustee, so long as he remains in the trust, may not undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

§ 3536. Disclosure of adverse interest; removal

If a trustee acquires an interest, or becomes charged with a duty, adverse to the interest of his beneficiary in the subject of the trust, he shall immediately inform the latter thereof, and may be at once removed.

§ 3537. Violations as fraud

A violation of section 3531, 3532, 3533, 3534, 3535, or 3536 of this title is a fraud against the beneficiary of a trust.

§ 3539. Mingling trust property with that of trustee

A transaction between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains an advantage from his beneficiary, is presumed to be entered into by the latter without sufficient consideration, and under undue influence.

§ 3539. Mingling trust property with that of trustee

A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use.

§ 3540. Measure of liability for breach of trust

(a) A trustee who uses or disposes of the trust property, contrary to section 3532 of this title, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

(b) A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

§ 3541. Liability of cotrustee for acts of others

A trustee is responsible for the wrongful acts of a cotrustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

Subchapter III—Obligations of Third Persons

§ 3561. Third persons as involuntary trustees

A person to whom property is transferred in violation of a trust, holds the property as an involuntary trustee under the trust, unless he purchased it in good faith, and for a valuable consideration.

§ 3562. Obligation of third person to see to proper application of trust property

A person who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights are not prejudiced by a misapplication thereof by the trustee. Other persons shall at their peril, see to the proper application of money or other property paid or delivered by them.

Subchapter IV—Miscellaneous Provisions

§ 3581. Trust companies as trustees, assignees, etc.

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as a trustee, assignee, receiver, or depositary, in like manner as an individual.

§ 3582. Oaths and affidavits of trust companies

If it is required that a trustee, assignee, receiver, or depositary shall qualify by taking and subscribing an oath, or an affidavit is required, it is a sufficient qualification by a corporation or association receiving an appointment, as such, if the oath is taken and subscribed, or the affidavit is made, by the president, vice president, secretary, manager, trust officer, or assistant trust officer thereof.

§ 3583. Waiver of provisions; intention of parties

Except where it is otherwise declared, the provisions of this chapter and chapter 163 of this title, with respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by chapter 35 of Title 4, relating to the interpretation of contracts; and the benefit thereof may be waived by a party entitled thereto, unless the waiver would be against public policy.

CHAPTER 163—TRUSTS FOR BENEFIT OF THIRD PERSONS

SUBCHAPTER V—TERMINATION OF THE TRUST

SUBCHAPTER VI—SUCCESSION OR APPOINTMENT OF NEW TRUSTEES

Subchapter I—Nature and Creation of the Trust

§ 3611. Trusts within scope of chapter

The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

§ 3612. Creation by mutual consent

The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

§ 3613. Trustor when trustee appointed by court or officer

When a trustee is appointed by a court or public officer, as such, the court or officer is the trustor, within the meaning of section 3612 of this title.

§ 3614. Declaration of trust

The nature, extent, and object of a trust are expressed in the declaration of trust.

§ 3615. Oral declarations; merger of previous declarations with written declaration

All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

Subchapter II—Obligations of Trustees

§ 3651. Obedience to declaration of trust

A trustee shall fulfill the purpose of the trust, as declared at its creation, and shall follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

§ 3652. Degree of care and diligence

A trustee, whether or not he receives any compensation, shall use at least ordinary care and diligence in the execution of his trust.

§ 3653. Care and diligence as to appointment of successor

If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he shall use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

§ 3654. Investments by trustee

A trustee shall invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the money invested.

§ 3655. Payment of interest on failure to invest

A trustee who omits to invest the trust moneys according to section 3654 of this title shall pay simple interest thereon, if the omission is negligent merely, and compound interest if it is willful.

§ 3656. Purchase by trustee of claims against trust fund

A trustee may not enforce a claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by a competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging it.

Subchapter III—Powers of Trustees

§ 3681. Authority as general agent

A trustee is a general agent for the trust property. His authority is only such as is conferred upon him by the declaration of trust and by this chapter. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

§ 3682. Uniting by cotrustees in acts to bind trust property

Where there are several cotrustees, all shall unite in an act to bind the trust property, unless the declaration of trust otherwise provides.

§ 3683. Discretionary powers

A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

Subchapter IV—Rights of Trustees

§ 3701. Indemnification

A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

§ 3702. Compensation

Except as provided by section 3782 of this title, when a declaration of trust is silent upon the subject of compensation the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled only to the amount thus specified. If it directs that he shall be allowed a compensation but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two or more trustees, the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

§ 3703. Involuntary trustee

An involuntary trustee, who becomes an involuntary trustee through his own fault, has none of the rights mentioned in this subchapter.

Subchapter V—Termination of the Trust

§ 3721. Extinguishment

A trust is extinguished by the entire fulfillment of its object, or by the object of the trust becoming impossible or unlawful.

§ 3722. Revocation

A trust may not be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor. In the latter case, the power shall be strictly construed.

§ 3723. Vacation of office

The office of a trustee is vacated by his death or his discharge.

§ 3724. Discharge of trustee

A trustee may be discharged from his trust only by:

(1) the extinction of the trust;
(2) the completion of his duties under the trust;
(3) such means as may be prescribed by the declaration of trust;
(4) the consent of the beneficiary, if he has capacity to contract;
(5) the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is legally incompetent; or
(6) the district court.

§ 3725. Removal by district court

The district court may remove a trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

Subchapter VI—Succession or Appointment of New Trustees

§ 3751. Appointment by court; nominee of beneficiary

The district court shall appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practical method of appointment. In all cases of appointment of a trustee by the court, if the beneficiary is 14 years of age or over, he may make nomination to the court, and unless the nominee is incompetent, upon one or more of the grounds of incompetency specified in section 1101 of this title, to discharge the duties of trustee, the court shall appoint the nominee as trustee. If there are two or more beneficiaries, only those 14 years of age or over may make the nomination.

§ 3752. Survivorship between cotrustees

On the death, renunciation, or discharge of one of several cotrustees the trust survives to the others.

§ 3753. When court shall appoint trustee

When a trust exists without an appointed trustee, or where all the trustees renounce, die, or are discharged, the district court shall appoint another trustee and direct the execution of the trust. The court may appoint the original number, or any lesser number of trustees.

CHAPTER 165—ADMINISTRATION OF TESTAMENTARY TRUSTS

Sec.

§ 3781. Continuing jurisdiction; accounting by trustee

(a) When a trust has been created by or under a will to continue after distribution, the district court does not lose jurisdiction of the estate by final distribution, but retains it for the purpose of the settlement of accounts under the trust.

(b) A trustee created by a will, or appointed to execute a trust created by a will, may, from time to time, pending the execution of his trust, or may, at the termination thereof, render and pray for the settlement of his accounts as trustee, before the court in which the

will was probated, and in the manner provided for the settlement of the accounts of executors and administrators. For that purpose the trustee, or his legal representatives in case of his death, shall present to the court his verified petition, setting forth his accounts in detail, with a report showing the condition of trust estate, together with a verified statement of the trustee, giving the names and post-office addresses, if known, of the beneficiaries. Upon the filing thereof, the clerk shall fix a day for the hearing, and give notice thereof of not less than 10 days, by causing notices to be posted in at least three public places in the Canal Zone, setting forth the name of the trust estate, the trustee, and the day appointed for the settlement of the account. The court may order such further notice to be given as may be proper.

(c) The trustee may, in the discretion of the court, upon application of a beneficiary of the trust, or the guardian of a beneficiary, be ordered to appear and render his account, after being cited by service of citation, as provided for the service of summons in civil actions, and the application may not be denied where an account has not been rendered to the court within six months prior to the application. Upon the filing of the account so ordered, the same proceedings for the hearing and settlement thereof shall be had as provided in subsection (b) of this section.

§ 3782. Expenses and compensation of trustees

On an accounting the court shall allow the trustee or trustees the proper expenses and such compensation for services as it deems just and reasonable. The court shall apportion the compensation among the trustees according to the services rendered by them respectively. The court may fix a yearly compensation for the trustee or trustees to continue as long as the court deems proper.

§ 3783. Declination of trustee; filling vacancies; jurisdiction

(a) A person designated as a trustee in a will which is admitted to probate in the Canal Zone may, at any time before final distribution, decline to act as trustee, and an order of court shall thereupon be made accepting the resignation. The declination of a person who has qualified as trustee may not be accepted by the court, unless it is in writing and filed in the matter of the estate in the court in which the administration is pending, and such notice shall be given thereof as is required upon a petition praying for letters of administration.

(b) The court in which the administration is pending may at any time before final distribution appoint a proper person to fill a vacancy in the office of trustee under the will, whether resulting from declination, removal, or otherwise, if it is required by law or necessary to carry out the trust created by the will that the vacancy be filled. A person so appointed shall, before acting as trustee, give a bond as is required by section 1371 of this title of a person to whom letters of administration are directed to issue. The appointment may be made by the court upon the written application of any person interested in the trust filed in the probate proceedings, and shall only be made after notice to all parties interested in the trust, given in the same manner as notice is required to be given of the hearing upon the petition for the probate of a will.

(c) In each case under this section, the court may order such further notice as it deems necessary.

(d) In accepting a declination under the provisions of this section, the court may make and enforce any order which may be necessary for the preservation of the estate.

(e) This section applies where a final decree of distribution has not been made; but the jurisdiction given by this section does not exclude, in cases to which it applies, the jurisdiction now possessed by the district court.